

Comments Submitted on Preliminary Draft Shoreline Master Program (July 2009 draft)

Date	Commenter-Affiliation (if applicable)	Type	Notes	Comment Number
9-11-09	Al MacKenzie, Renton Rowing Club	Letter with attachments		A
9-9-09	Lowell Anderson	Verbal- PC Minutes		B
8-11-09	David Douglas- Waterfront Construction	Letter with attachments		C-1
8-12-09	David Douglas- Waterfront Construction	Verbal- PC Minutes		C-2
7-29-09	David Halinen- AnMarCo	Verbal- PC Minutes		D-1
8-12-09	David Halinen- AnMarCo	Verbal- PC Minutes		D-2
9-9-09	David Halinen- AnMarCo	Verbal- PC Minutes		D-3
9-9-09	David Halinen- AnMarCo	List of Comments		D-4
9-11-09	David Halinen- AnMarCo	Letter with attachments	Attachment is the same list as submitted by David Halinen 9-9-09	D-5
9-9-09	Andy Kindig- AnMarCo	Verbal- PC Minutes		E-1
9-9-09	Andy Kindig- AnMarCo	Letter with attachments	Attachment is the same list as submitted by David Halinen 9-9-09	E-2
9-11-09	Andy Kindig- AnMarCo	Stream Report for Old Stoneway Site- including attachments		E-3
9-14-09	Dean Patterson- Futurewise	Letter		F
9-5-09	Boeing Company	Verbal- staff meeting notes		G-1
9-11-09	Gabe Rosenthal- Boeing Company	Letter		G-2
9-14-09	Gabe Rosenthal- Boeing Company	Email		G-3
No date	Gwendolyn High- Planning Commissioner	List of comments		H
8-12-09	Jerry Brennan	Verbal- PC Minutes		I-1
9-9-09	Jerry Brennan	Verbal- PC Minutes		I-2
9-9-09	Jerry Brennan	Letter with attachments		I-3
9-18-09	Karen Walter- Muckleshoot Indian Tribe Fisheries	Letter		J
9-9-09	Tim Riley	Verbal- PC Minutes		K
8-12-09	Robert Cugini	Verbal- PC Minutes		L
9-9-09	Larry Martin- Cugini Family	Verbal- PC Minutes		M-1
9-11-09	Larry Martin- Cugini Family	Email with attachment		M-2
9-9-09	Laurie Baker	Verbal- PC Minutes		N-1
9-11-09	Laurie Baker	Email		N-2

September 11, 2009

Erika Conkling
Renton Planning Commission
1055 S. Grady Way
Renton, WA 98055

Subject: Shoreline Master Program

Dear Erika and Renton Planning Commission,

I would like to offer a few comments from 2 perspectives – one as a waterfront property owner in the unincorporated King County area on Rainier Ave S. and the other as a longtime advocate for a Renton community rowing facility.

As a property owner I'm not sure I have anything new to add to what has already been expressed by others in some of the hearings, but would like to reiterate a few concerns:

1. The need to avoid overly restrictive standards on new installation/repairs/replacement of existing bulkheads
2. Support regulatory standards with sound science behind the recommendations
3. Do not over regulate existing SMP's in the attempt to achieve "no net loss"

I would also like to offer some comments on the "Public Access Options" technical memorandum. Since returning to the Renton area in 1977 after Army military service, I have been involved with several attempts to establish a community rowing program and facility. The memorandum talks often of goals and policies with the objectives of increasing public accessibility to the shorelines. In addition to views and paths to the water I would recommend adding "providing access to getting the public on the water". Rowing has to be one of the more water dependent activities there is.

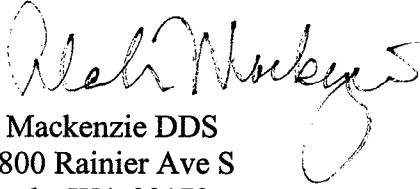
Renton had a rowing program that was started in the 1980's in the waterwalk area of Coulon Park, but was displaced by expansion of the Ivar's Restaurant system. The Boeing Hydrofoil building was presented as option for the program to continue, but was not made a functional building for occupancy until many years later. Once able to be occupied, it was leased to Cascade Canoe and Kayak – but there was not sufficient space for a rowing program to be included there as well.

Renewed interest in a Renton community rowing program in recent years has led to the search once again for a suitable site. Inquiries were made regarding the Seahawks site, Barbee Mill, Seco/Bristol, DNR property, Renton Airport, and Renton Parks – all sites listed as various components of the Lake Washington Reaches shoreline. We are currently located on a trial basis in the Cedar River Trail Park near the point where the river enters Lake Washington. Current regulations may prevent us from placing a building and permanent dock there to provide the type of program we feel would be of benefit to youth and adults in the community.

The closing "recommendation" paragraph in the technical memorandum document talks of developing "an integrated plan for a shoreline area public access system that identifies specific public needs and opportunities". If there is a plan that can be developed with some real teeth in it,

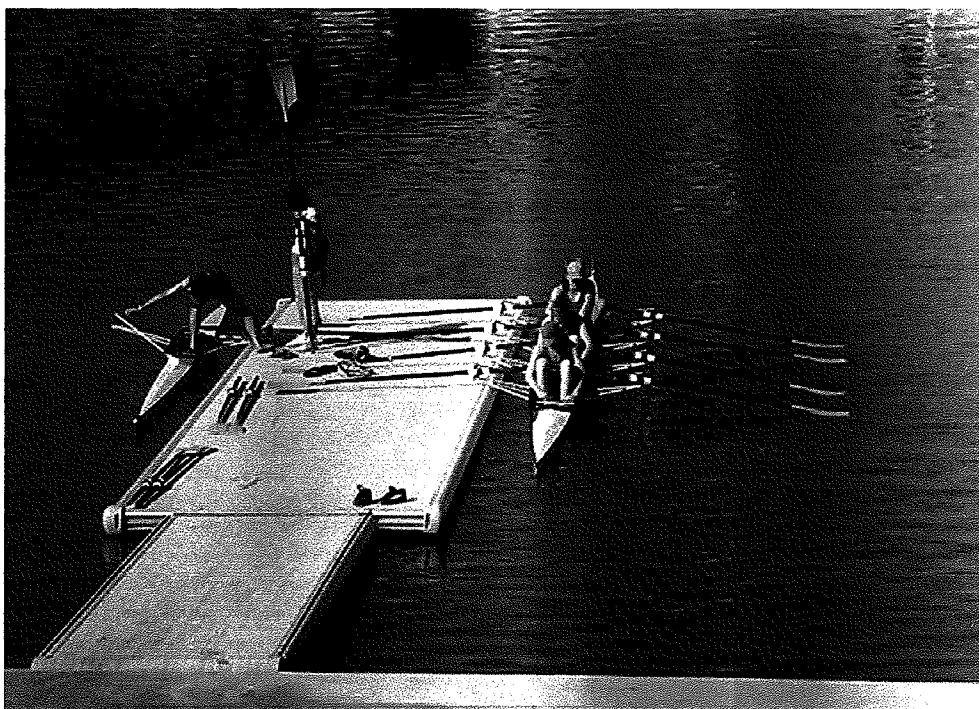
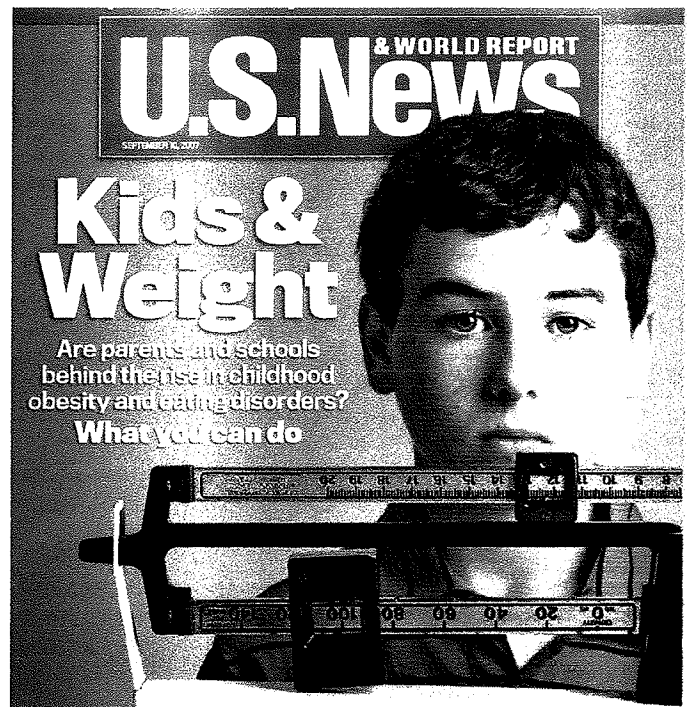
then it might provide some leverage for the effort to create a community rowing center. We've been trying to do so for over 30 years and have found getting any traction to be difficult to say the least. Also as seen from a larger perspective, part of the solution for the current health care crisis nationwide is in providing for the need for recreational opportunities for local citizens – both young and old. A community rowing center and programs could be part of the answer.

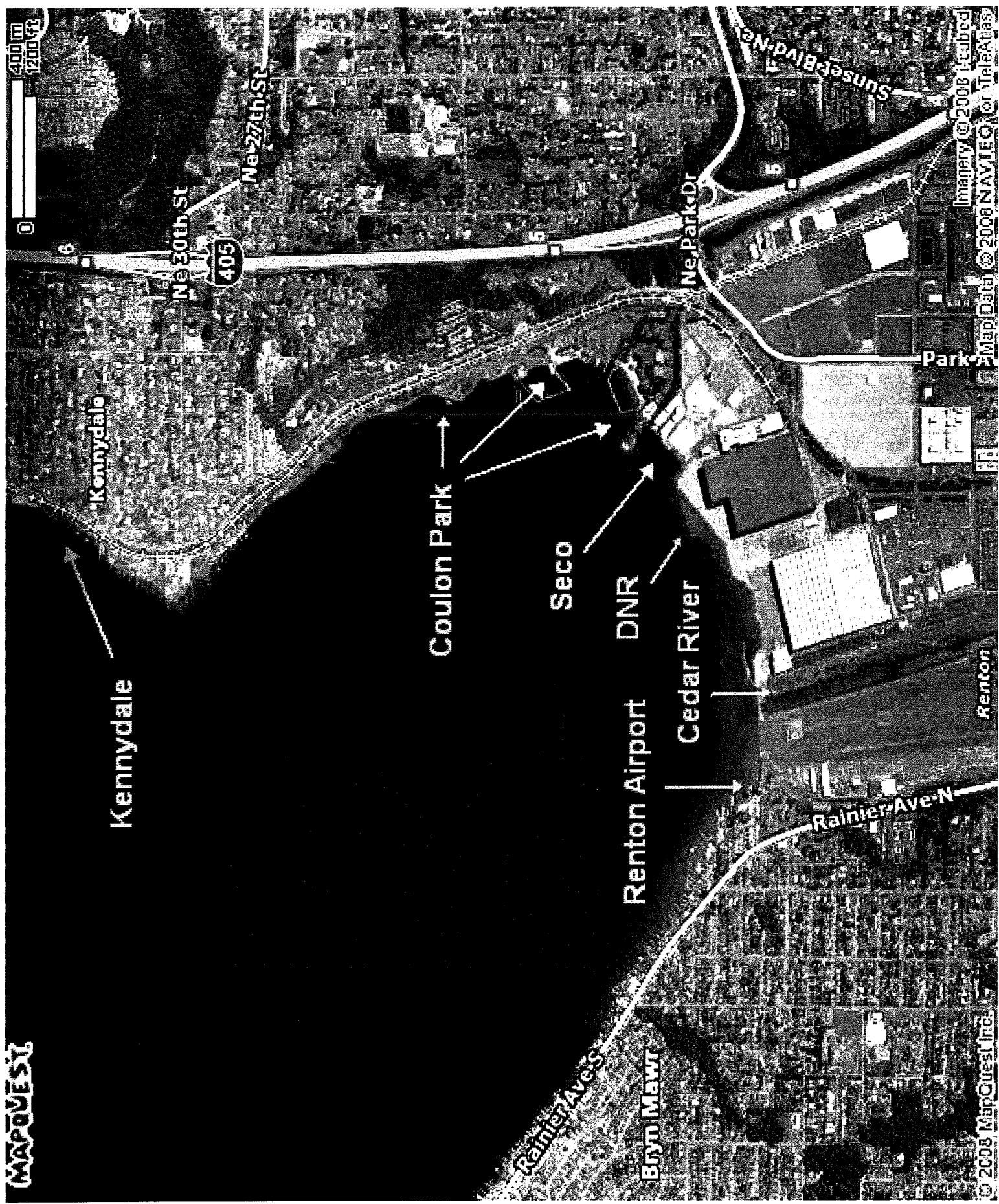
Best regards,

A handwritten signature in black ink, appearing to read "Al Mackenzie", with a stylized flourish at the end.

Al Mackenzie DDS
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Seattle, WA 98178

prc@seanet.com
206 772-3153





Kennydale

Kennydale

Coulon Park

Seco

DNR

Renton Airport

Cedar River

Bryn Mawr

Rainier Ave N

NE 30th St

NE 27th St

NE Parks Dr

Park

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Cedar River Trail Park





August 11, 2009

City of Renton
Attn: Erika Conkling- Senior Planner
Planning Commissioners
1055 S Grady Way
6th Floor
Renton, WA 98056

Ref: REVIEW AND COMMENTS ON THE RENTON SHORELINE MASTER PROGRAM DRAFT DATED JULY 22, 2009

Ms. Conkling and Planning Policy Commissioners,

Thank you for your hard work and dedication on behalf of the citizens of Renton living within the area affected by the rules and regulations of the Shoreline Master Program. Thank you also for allowing me to present "The Shoreline Permitting Process" slide show and answer questions at the July 29, 2009 Planning Commission Meeting. By the response and questions asked it is evident that your goal is to balance the SMP Update between fairly serving and protecting waterfront property owners while meeting the minimum requirements mandated by the WA Department of Ecology to protect fish life the environment.

After reviewing the Draft SMP I want to commend your Planning Staff and Biological Consultant for preparing an easy-to-read document that your citizens and others will be able to grasp and understand. It lays the foundation that other governments could replicate in keeping their SMP simple and to the point. While there are some areas of concern it promotes a sense of cooperation, balance and flexibility between applicants and their local government to design and permit projects that protect the environment while providing for the reasonable moorage needs of your property owners.

The changes involved in the SMP Update will have major impacts on waterfront property owners and if done haphazardly has the possibility of declaring nearly all existing structures, both piers and bulkheads, as legally non-conforming thereby triggering numerous variances that are now approved by local government under a Substantial Development Permit process. If not crafted carefully it will not only anger people, but also discourage many from participating in the permit process and remove all incentive for those with existing structures to make environmental improvements through repair and replacement. This is not the intent of the Shoreline Management Act in which the legislature seeks a balanced approach to shoreline development and protection of individual property rights. The removal or limiting of property rights has taken center stage and at least 2 citizens groups have retained lawyers to protect their rights and reasonable use of private property.

One of the biggest concerns is minimal citizen participation and attendance because most waterfront property owners do not understand how this will impact their futures and property values. I encourage the City to make every effort possible to increase public participation, research and challenge the science behind the push for sweeping changes, understand and recognize what is already working through guidelines from other state and federal regulations, and adopt a SMP that is equitable to all parties. Several local governments are adopting a program that reads more like an unreasonable Penal Code rather than a practical regulatory tool. You, the Planning Staff and the City Council have a monumental and very important responsibility and only one chance to get it right.

I have listed my concerns, comments and suggestions regarding the Draft SMP on the following pages.

Seattle Office

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205 NE Northlake Way, Suite 230, Seattle, WA 98105
P: (206) 548-9800 F: (206) 548-1022

Everett Office

Waterfront Construction, Inc.
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- 1) **7.07.02(B)(p.71)- Single family residential property owners required to demonstrate that shared moorage is not available.**

Why are single family residential property owners being required to demonstrate that shared moorage is not available? WAC 173-26-231(3)(b)(p.71) states "Where new piers or docks are allowed, master programs should contain provisions to require new residential development of two or more dwellings to provide joint use or community dock facilities, when feasible, rather than allow individual docks for each residence.

This section of the WAC classifies a single family residential pier as a water-dependent use not subject to the same requirements for joint-use or community dock facilities pertaining to two or more dwellings. This also makes single family residential property owners subject to the desires of their neighbors and can create conflict.

Request/Recommendation- Please consider eliminating this requirement by removing the words, "but is subject to demonstration that shared moorage is not available" from the text.

- 2) **7.07.03(B)(2)(p.71)- This is similar to the subject in number 1 above and is not supported by the WAC.**

Request/Recommendation- Please consider eliminating the second sentence in this section where it requires an individual lot owner to demonstrate adjacent owners have been contacted and have declined to develop or utilize a shared dock.

- 3) **7.07.03(B)(3)(p.71)- Requires demonstration that a mooring buoy is "impractical".**

The term impractical can take on many meanings and applications. This is the only draft SMP I where have seen this recommendation and it is problematic. This position is not required under the guidelines for SMP Updates from DOE. WAC 173-26-231 does not discuss mooring buoys in conjunction with residential piers. This requirement is unreasonable and reaches well beyond the written requirements of the SMP Update.

Request/Recommendation- Please consider eliminating the requirement where use of a mooring buoy is demonstrated to be impractical.

- 4) **7.07.04(E)(p.73)- Pile spacing beyond the first set.**

The last sentence in this section addresses pile spans beyond the first set of piles by requiring them to be spaced at least 20 feet apart, unless substrate conditions provide otherwise, and shall be no greater than 12-inches in diameter. As a planning document the SMP should not be directed at the structural aspects of an overwater structure as this is driven by load requirements in the International and Residential Building Codes. It is the responsibility of the marine contractor to design and the local building department to review and approve structures based on load requirements.

It benefits both contractor and property owner when the project is designed in the most cost effective way using fewer and smaller diameter piling spaced as far apart as possible while still meeting minimum load requirement. While most projects will meet these criteria there may be times when structure width or other conditions require shorter pile spans. This rule could require additional batter (angle) piles to be installed to provide additional vertical and lateral support that would not otherwise be necessary. If piles are spaced closer than 20 feet it is almost always driven by sectional pier lengths and the need to spread the load equally over the entire structure.

The City of Kirkland originally planned on including a similar rule in their SMP Update but after understanding the consequences of such a requirement the City removed it and has left this responsibility to the contractor, engineer, and Building Department. They are only requiring the first set of piles to be at least 18 feet from the OHWM.

Request/Recommendation- Please consider eliminating the requirement that piles beyond the first set shall be spaced no closer than 20 feet.

5) **7.07.04(G)(1)(2) and (3)(p.74)- Use of Materials Specified in Regulation**

1) The need for this section is unclear in that approved materials should be required for all repair or replacement project regardless of percentage of the dock or pier. All projects, regardless of size or scope, which must also be approved by WDFW and/or the Army Corps of Engineers requires approved materials and preservatives to be used. This is not based on percentage but protection of fish life and improvements to the environment.

2) What is the meaning of number 2 in this section and what is meant by "these regulations"? Does this mean if more than 30% of a pier or pilings are replaced that the entire structure must comply with the standards for new piers? If this is the objective, it will present a problem since existing piers can currently be repaired and even replaced as a shoreline and SEPA exemption under the WAC as long as there is no change in size, location or configuration. Also, any or all piling can be repaired and replaced without any work involving the pier structure itself so this must also be taken into consideration.

Rarely is less than 30% of an existing structure repaired or replaced. It is more common to repair or replace the entire pier surface and some or all of the piling or do a total pier replacement within the same footprint as the existing structure. This offers one of the best opportunities for property owners to retain their existing structure while making environmental improvements by using fewer and small diameter steel piling, elevating the pier higher above the water, and installing a 100% grated surface to promote light penetration. It is paramount that the City seizes the opportunity to team with property owners by allowing them to retain and improve existing structures whether or not they exceed the dimensional standards placed on new development. As mentioned above, these usually qualify for exemptions from the SDP process and always reflect improvements.

3) The same questions are asked for number 3 as above in number 2. Additionally, if an existing dock is moved or reconfigured it can involve the removal of a section of pier in the nearshore area and an addition in deeper water whereby resulting in an improvement. Some of this work can be done under a shoreline exemption if the cost is less than ten thousand dollars and other scenarios may include a removal of a pier section without replacement.

Request/Recommendation- Can the City clarify if the requirements in 7.07.04(G)(1), (2) and (3) pertain to the requirements listed under 7.07.04 Design Criteria- General or if they direct these specific scenarios to the regulations in the entire SMP?

NOTE- Because of a highly developed shoreline, redevelopment, repair and replacement of existing structures are the best way for the City to improve habitat. The City should consider establishing an alternative process whereby planners can evaluate work proposed to existing piers on a case-by-case basis. By using today's standard pier designs from Waterfront Construction and other marine contractors who work with state and federal agencies to address environmental concerns and impacts to listed species and critical habitat replacing existing structures always reflect measurable improvements and the state's requirement for "no net loss" of shoreline ecological functions.

6) **7.07.05(B)(1)(a)(p.74) Design Criteria for Single-Family Dock and Pier- Length**

Limiting docks based on a maximum length or water depth can be problematic if it is not applied correctly or in the proper order. The City of Mercer Island is a good example to use as it has been very effective in limiting dock length while serving the reasonable moorage needs of property owners.

Having a maximum pier length established first and then allowing the length to be exceeded in the event adequate water depth has not been achieved is a reasonable approach.

Because WAC 173-26-231 and SMP Update Guidelines state, "Pier and dock construction shall be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use", the way the length is written may not accommodate the intent of the WAC. It may also prevent the widest pier sections along with boating and human activity from being located as far from the critical nearshore area as possible.

Scenario 1: Under the proposed regulation, if 8' depth is reached allowing the inland side of the vessel to be moored at 60' from the OHWL and the applicant wants to moor a 40' boat, then they would need a 100' long pier. The same would apply if 8' depth is reached allowing the inland side of the vessel to be moored at 40' and they have a 60' vessel. Under the proposed regulation they would need to apply for a variance or settle for the 80' maximum pier length which means the vessels may ground out on the bottom and would also be moored in the critical nearshore area.

Scenario 2: Under the proposed regulation if 8' water depth is reached 20 feet from the OHWL and the property owner wants an 80 foot pier even if they have a 30 foot vessel, they will need to claim a 60 foot long vessel in order to have the pier approved at 80 feet long. The same scenario can be used to allow all owners to have an 80' long pier regardless of vessel size.

Although it is unclear why the City is proposing to change its current maximum pier length which is already more restrictive than most, it can be done in a way that will not trigger the need for shoreline variances or encourage applicants to submit false or misleading information to get a longer pier. Under the proposed regulation all piers are restricted to 80 feet long whether or not adequate moorage depth is attained.

Proposed Updated SMP Pier Lengths in Other Communities

Kirkland is proposing piers to be a maximum of 150' long

Redmond is proposing pier to be the lesser of 80 or a water depth of 13' at the end of the pier

Current Pier Lengths in Other Communities

Mercer Island- 100' max length or 10' at OLW to 150' max

Bellevue- 80' max length or 10' at OLW to 150' max

King County- 80' max length or 13' at OHW

Hunts Point- 100' max length

Yarrow Point- 150' max length

Lake Forest Park- 150' max length

Medina- 100' max length

Seattle- 100' max length or subtended line

Renton's current maximum pier length and water depth is less than most other jurisdictions, many of which are located on Lake Washington with similar shorelines. No jurisdictions limit pier length to 8' water depth and most use depths similar to the existing Renton code.

Request/Recommendation- Can the City consider retaining the existing regulation (80' or until a water depth of 12' below mean low water is reached, whichever comes first) or reword the proposed change to provide clarity and avoid ambiguity? Will the City consider the following regulation which will allow piers to extend 80' or to a point where water depth at the OHWL of Lake Washington is 9.8'?

"The maximum length of a pier, dock, or float is 80 feet beyond the Ordinary High Water Line or to a point where the water depth at the end of the pier is 8 feet below the mean low water mark."

- 7) **7.07.05(B)(1)(b) and (2)(a) and (b)(p.74) Design Criteria for Single Family Docks and Piers- Length and Width**
While pier walkways are limited to 4' in width and traditional ell and floats limited to 6 feet wide, a type of popular pier design often overlooked, especially for joint-use applications, is where the width of the walkway is increased at the end to allow more area where most activity occurs. This is often referred to as a "flare" and is similar to an ell but does not angle off from the main walkway. This is probably the most environmentally conservative design since it is more compressed, decreases overall structure size and serves as the best design to accommodate mooring piles for large watercraft moorage in a joint-use project.

I have included a set of drawings to demonstrate a typical application where this design is used. The project on the drawings is a 6' x 40' wide section because it is a joint-use pier.

Request/Recommendation- Can the City consider modifying these regulations to allow a section at the most waterward end of the pier main walkway to include up to a 6' wide by 26' long "flare" or "widened section" for a single owner pier and an additional length for joint-use applications? The City may want to consider either a 40' or 50' long section for joint-use piers due to the increased number of users and the increased activity.

NOTE: Many people do not know that under the Corps RGP-3 a joint-use project each property owner is allowed to have a 6' x 26' ell extending from the main walkway making the total section size at the end of the pier 6' wide x 56' long (including the 4' wide walkway). This makes the straight out design with a "flare" at the waterward end of the main walkway favorable.

8) **7.07.07(B)(2)(d)(p.74)- Maximum ramp width**

This dimensional standard is being promoted in several local SMP Updates and needs to be addressed. It is unclear why a pier walkway is allowed to be 4 feet wide but a less impacting ramp only 3 feet. This, for the most part, has been adopted directly from the Corps RGP-3 but it should be understood that the Corps has not returned a single project and has approved each one where the application I describe below has been used. What local governments may not understand is that all (I can only speak for Waterfront Construction but most marine contractors use similar products) there is an Inside Diameter (I.D.) and Outside Diameter (O.D.) width when referring to ramps. We use ramps that have a 3' wide walking surface to accommodate access for everyone including those having disabilities or confined to wheelchairs.

If the 3 foot wide limit is applied to the O.D. then the walking surface of the ramp will only be 2'-4", a mere 28", because of the 4" bottom and top support chords. When the handrail is installed toward the top of the ramp it further limits the overall width. If ramp width is limited to 3' wide O.D. it will not allow reasonable access for all persons and trigger the use of smaller chords whereby limiting span capabilities and even necessitate the use of piles mid span on the ramp. Currently ramps can clear span over 50 feet which allows us to eliminate any piles in the nearshore area where this type of application is used. Ramps also have a 100% grated surface and allow more light penetration than pier walkways.

I am providing 3 drawings of a typical project using a ramp. Three similar projects have been approved by the City of Renton and will receive uncontested approval by WA Dept of Fish and Wildlife and the Army Corps of Engineers due to its preferred design. The walking surface is 3', I.D. is 3'-1" and the O.D. is 3'-9". This is typical of all projects. Should the City of Renton adopt a policy that limits ramp width (without clarification as described above) it will trigger shoreline variances for all such projects.

Request/Recommendation- Can the City consider clarifying and making this regulation more reasonable to allow ramps to be a maximum width of 3'-9" Outside Diameter (O.D.) or 3'-1" Inside Diameter (I.D.) and a maximum walking surface of 3'?

Failure to do so will result in additional time and application paperwork for the applicant and City staff, more Shoreline Variances and hearings, delayed approvals, and cost for the property owner. This is in spite of the fact that these projects are routinely approved by the federal agency that implemented the 3 foot width limit on ramps. Please consider this practical step that no one has thought to question or research.

Additionally, except in extreme cases, this will eliminate or limit the use of 7.07.05(B)(2)(e) except in extraordinary cases because it will accommodate nearly everyone with disabilities or confined to wheelchairs.

- 9) **7.07.05(B)(6)(p.75)- Pile spacing beyond the first set.**
Please see the information under number 4 above.

Request/Recommendation- Please consider eliminating the requirement that piles beyond the first set shall be spaced no closer than 20 feet.

- 10) **7.07.05(B)(?) New regulation allowing mooring piles**
Mooring piles are not listed in the current RMC and therefore require a Condition Use Permit every time they are proposed. Mooring piles are routine part of many moorage structures and in most cases limits or eliminates the need for additional overwater coverage to provide adequate 4 point tie-up for larger boats or where a boatlift is not present. Mooring piles are preferred by state and federal agencies and are allowed in all other jurisdictions.

Request/Recommendation- Please consider including up to (2) mooring piles for a single owner pier and up to (4) for a joint-use pier shared by 2 property owners as an outright permitted use in the City's SMP. Mooring piles are typically 10" or 12" diameter and are typically installed located between 16 to 24' from the pier depending on the size of the watercraft.

- 11) **7.07.05(C)(2)(a)(i)(p.75)- Joint Use Piers and Docks- Length**
Please see information under number 6 above.

Request/Recommendation- Can the City consider retaining the existing regulation (80' or until a water depth of 12' below mean low water is reached, whichever comes first) or reword the proposed change to provide clarity and avoid ambiguity? Will the City consider the following regulation which will allow piers to extend 80' or to a point where water depth at the OHWL of Lake Washington is 9.8'?

"The maximum length of a pier, dock, or float is 80 feet beyond the Ordinary High Water Line or to a point where the water depth at the end of the pier is 8 feet below the mean low water mark."

- 12) **7.07.05(C)(2)(a)(ii), (b)(i) and (b)(ii)(p.75)- Joint Use Piers and Docks- Length and Width**
Please see information under number 7 above.

Request/Recommendation- Can the City consider modifying these regulations to allow a section at the most waterward end of the pier main walkway to include up to a 6' wide by 26' long "flare" or "widened section" for a single owner pier and an additional length for joint-use applications? The City may want to consider either a 40' or 50' long section for joint-use piers due to the increased number of users and the increased activity.

- 13) **7.07.05(2)(b)(iv)(p.75)- Joint Use Piers and Docks- Ramp Width**
See information under number 8 above.

Request/Recommendation- Can the City consider clarifying and making this regulation more reasonable to allow ramps to be a maximum width of 3'-9" Outside Diameter (O.D.) or 3'-1" Inside Diameter (I.D.) and a maximum walking surface of 3'?

- 14) **7.07.05(2)(?) New regulation allowing mooring piles**
Mooring piles are not listed in the current RMC and therefore require a Condition Use Permit every time they are proposed. Mooring piles are routine part of many moorage structures and in most cases limits or eliminates the need for additional overwater coverage to provide adequate 4 point tie-up for larger boats or where a boatlift is not present. Mooring piles are preferred by state and federal agencies and are allowed in all other jurisdictions.

Request/Recommendation- Please consider including up to (2) mooring piles for a single owner pier and up to (4) for a joint-use pier shared by 2 property owners as an outright permitted use in the City's SMP. Mooring piles are typically 10" or 12" diameter and are typically installed located between 16 to 24' from the pier depending on the size of the watercraft.

- 15) **7.07.05(2)(e)(p.76)- Joint Use Piers and Docks- Pile spacing beyond the first set**
Please see the information under numbers 4 and 9 above.

Request/Recommendation- Please consider eliminating the requirement that piles beyond the first set shall be spaced no closer than 20 feet.

- 16) **8.04.02(E) Shoreline Stabilization- Regulations- Replacement of an existing structure**

Shoreline stabilization, specifically the replacement of existing structures, is one of the most controversial issues experienced during the SMP Updates. In many cases, DOE has pushed for the total removal of bulkheads with few exceptions when it comes time to conduct major repair or replacement, even when improvements or "no net loss of shoreline ecological functions" is evident. WAC 173-26-231 has taken the step to classify replacement bulkheads as "new", a classification waterfront property owners, marine contractors, many professional biologists and local and regulatory agency staff (unofficially of course), and most neutral people disagree with.

This single issue has resulted in some jurisdictions taking extreme stands against the repair and replacement of existing bulkheads, even when they are done in a more environmentally friendly design. A repair involving a certain percentage or length of an existing bulkhead or a single toe rock is being declared as a major repair or replacement and placing it under the classification of "new". This has infuriated waterfront property owners with existing bulkheads and may become a point of legal action in the future for local governments and DOE. This is an area where there has been absolutely no flexibility on the part of the Agency in working with property owners and the science being used to support this extreme approach has plenty of questions and gaps that are not being addressed.

Although I understand the need for local governments to accept "state" definitions in updating an SMP, it is also appropriate for local government and citizen to question and even challenge these terms if they are distorted in order to support a resulting action.

Please think about the following definitions from reliable and broadly accepted sources (e.g. Merriam Webster and Dictionary.com) when you are reviewing areas of the SMP update related to work involving existing structures:

New- having recently come into existence or use; what is freshly made and unused; or has not been known before or not experienced before;

Replacement- to restore to a former place or position; to take the place of especially as a substitute or successor; to put something new in the place of; implies a filling of a place once occupied by something lost, destroyed, or no longer usable or adequate; to assume the former role, position, or function of; substitute for (a person or thing):

Repair- to restore to a sound or healthy state

It is hard to dispute that a replacement or repair of an existing bulkhead (or pier) is distinct from a totally new and previously nonexistent structure.

Section 8.040.02(E) allows for the replacement of an existing shoreline stabilization structure with a similar structure if there is a demonstrated need to protect principle uses or structures from erosion caused by currents or waves. It also takes wording verbatim from the WAC which states, "'replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing legally established structure which can no longer adequately serve its purpose.

How can demonstrated need be adequately evaluated or documented if there is a structure in place that has been providing protection from erosion in the past? This would strictly be conjecture on the part of a geotechnical engineer or anyone else forecasting future erosion rates and an inability to foretell future storm events. Except in the most obvious cases, it will be difficult to find a professional engineer willing to risk reputation or professional integrity on "confirming" there is a significant possibility that a structure will be damaged within three years.

Bulkhead replacement, typically using riprap that is battered (laid back) toward the upland result in a softer approach than existing rock and concrete structures and clearly result in a "no net loss of shoreline ecological functions". They are installed at or behind the footprint of the existing bulkhead and nearshore fill is installed to provide shallow nearshore habitat for fish. This is listed as preference number 3 under 8.08.02(B) of the proposed draft.

Section 8.04.02(D) lists requirements for "new" structural stabilization which is credible in an attempt to prevent more bulkheads along the shoreline but Section 8.04.02(E) lists different criteria for the replacement of existing structures.

Based on the current design of riprap bulkheads used for repair or replacement of existing structures all criteria in this section 8.04.02(E) are met including:

1. They meet preference 3 of Subsection B
2. They are designed, located, sized, and constructed to assure a no net loss of ecological functions,
3. They are never installed further waterward of the ordinary high-water mark or existing structure and are often installed behind the existing structure,
4. The existing structure is always removed to assure a no net loss of ecological functions is achieved and Exceeded,
5. Replenishment or installing new substrate materials in a size and mixture recommend by the WA Department of Fish and Wildlife is a part of every project to provide shallow nearshore fish habitat.

NOTE: A planting plan of native vegetation is installed on all bulkhead projects. Authorizing the replacement of existing bulkheads will accelerate the rate at which native plants are installed along the shoreline much faster than waiting for property owners to allow existing bulkheads to fail and encourage substandard or impacting repair using self help or renegade contractors outside the permit process.

It seems the City of Renton is trying to accommodate the repair and replacement of existing bulkheads with similar structures as long as the City can document that "no net loss" is achieved. If that is the case your intentions are recognized and applauded. If my interpretation of this section is mistaken please explain the City's position in clear terms for someone who wants to repair or replace an existing bulkhead with a similar structure proposed in a better design and which reflect "no net loss" through practical and reasonable review and evaluation.

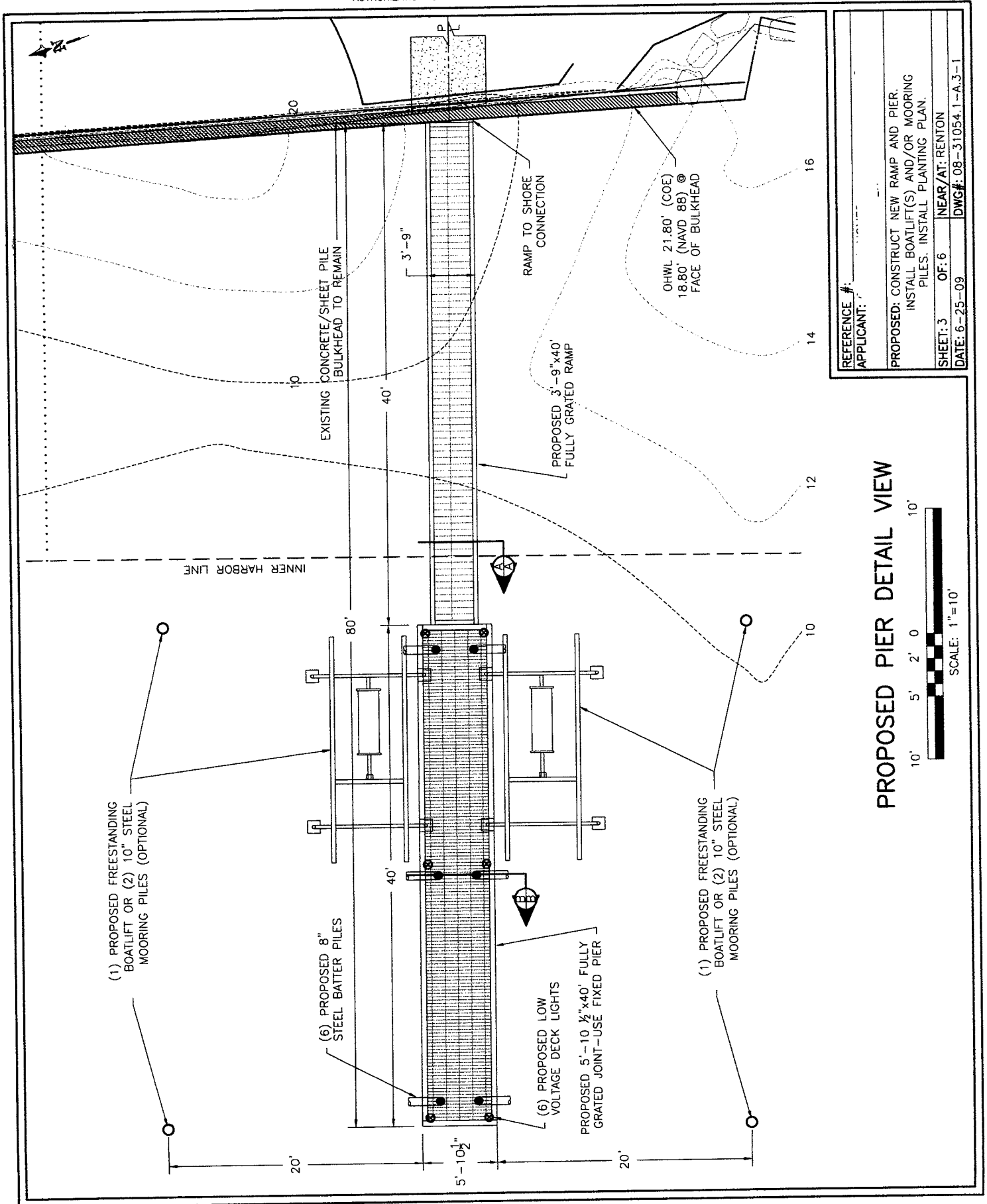
FINAL NOTE: Thank you for including boatlifts as a listed use in the Updated SMP. This will save property owner and the City time and expense associated with a Conditional Use Permit. This same consideration as mentioned earlier is requested for mooring piles.

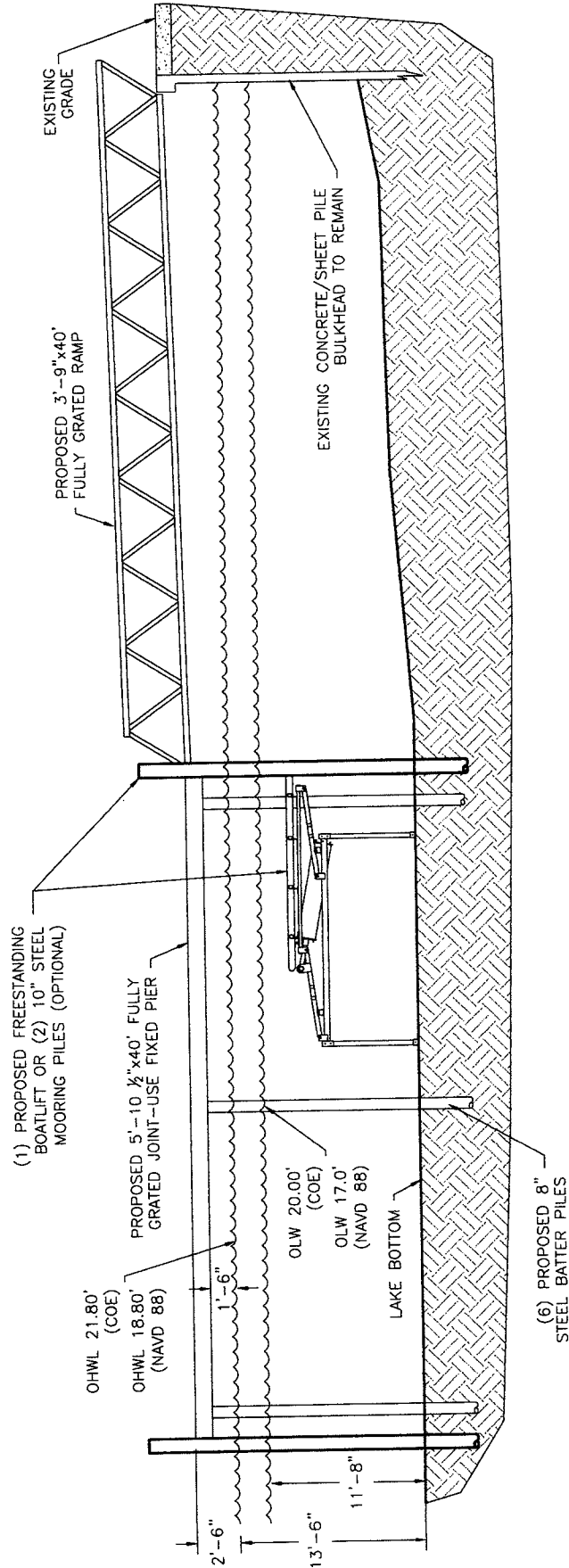
I appreciate your time and the opportunity to comment on the Renton SMP Draft. I must reiterate that the Renton SMP is one of the better written and understandable documents I have reviewed since my involvement nearly 2 years ago. We should all hope that as many citizens, specifically waterfront property owners, become involved in the update process by expressing their views and engaging in productive dialogue that results in an effective and successful SMP.

If you have any question or need additional information I may be contacted via phone at 425-357-0312 or e-mail at daved@waterfrontconstruction.com.

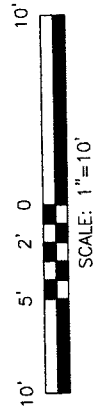
Sincerely,

David Douglas
Permit Coordinator
Waterfront Construction, Inc.





PROPOSED PIER ELEVATION VIEW

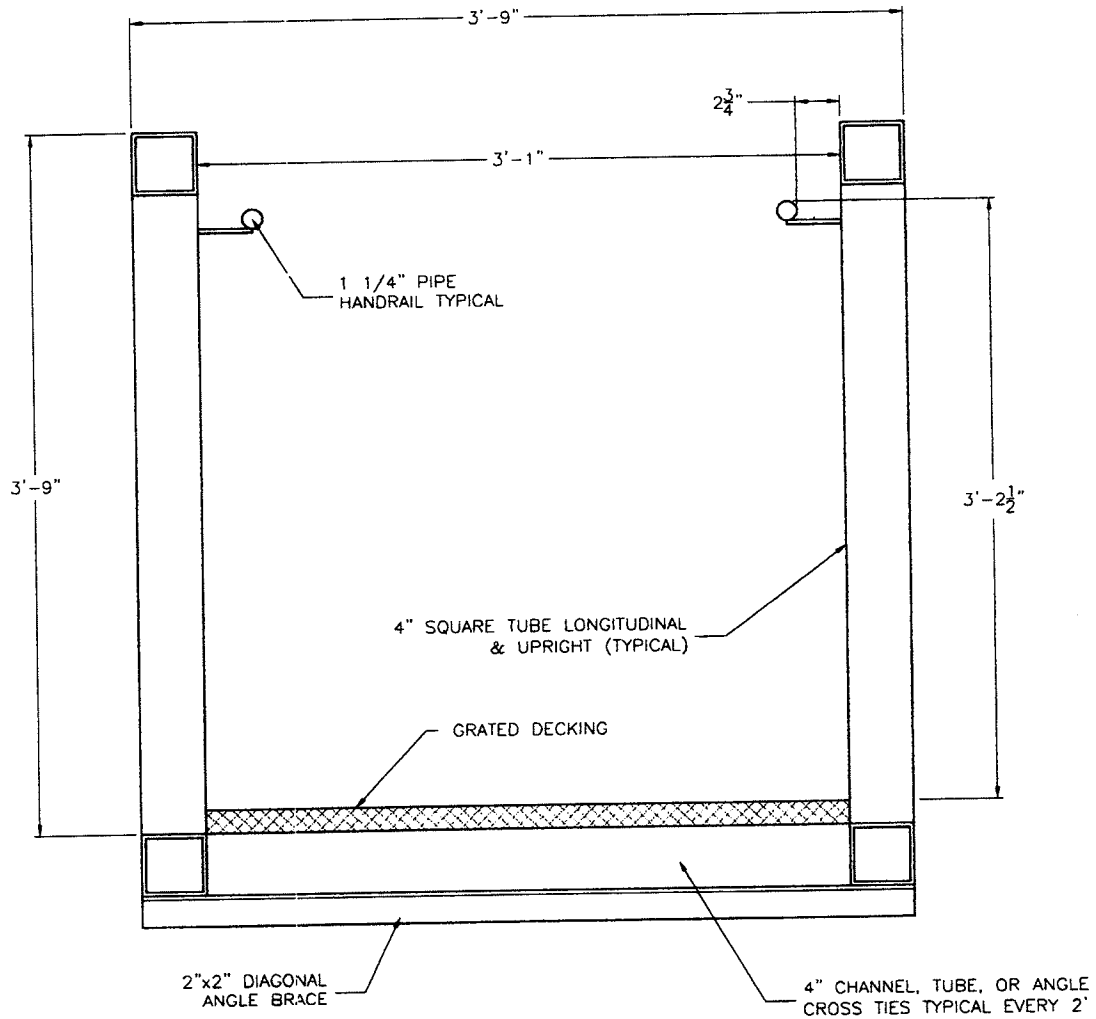


REFERENCE #:
APPLICANT:

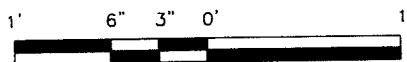
PROPOSED: CONSTRUCT NEW RAMP AND PIER.
INSTALL BOATLIFT(S) AND/OR MOORING
PILES. INSTALL PLANTING PLAN.

SHEET: 4 OF: 6
DATE: 6-25-09
NEAR/AT: RENTON
DWG#: 08-31054.1-A.4-1

PROJECT DESIGNED BY:
Waterfront Construction Inc.
 THIS DOCUMENT IS **PROPRIETARY** PROPERTY OF WATERFRONT
 CONSTRUCTION INC., AND IS NOT TO BE USED, IN WHOLE OR IN
 PART, FOR ANY OTHER PROJECT WITHOUT THE WRITTEN
 AUTHORIZATION OF WATERFRONT CONSTRUCTION INC.



RAMP SECTION A-A



SCALE: 1"=1'

REFERENCE #:		
APPLICANT:		
PROPOSED: CONSTRUCT NEW RAMP AND PIER. INSTALL BOATLIFT(S) AND/OR MOORING PILES. INSTALL PLANTING PLAN.		
SHEET: 5	OF: 6	NEAR/AT: RENTON
DATE: 6-25-09	DWG#: 08-31054.1-A.5-1	

David Halinen

Rec'd

Renton Shoreline Master Program PMX Revisions, July 22, 2009 — 9-9-09
AnMarCo's Requested Revisions (Proposed new text underlined and boldfaced; existing text proposed to be deleted are illustrated by ~~strikethrough~~)
9-8-09

Requested Revision Number	Page of 7-22-09 Draft	Section	AnMarCo's Requested Revision	AnMarCo's Comments
1	36	5.07.01A	Objective: The objective of the High Intensity Overlay on the Cedar River is to provide opportunities for large-scale office and commercial uses, <u>mixed-use commercial, office and residential developments where underlying zoning is COR under RMC 4-2,</u> and industrial employment centers consistent with the Comprehensive Plan and underlying zoning for specific areas. <u>Each future development should protect and preserve</u> existing ecological functions and restore ecological functions in areas that have been previously degraded <u>should mitigate project impacts by restoring or enhancing shoreline ecological functions to the extent necessary to assure that each development project will cause no net loss of shoreline ecological functions.</u>	Provides for mixed-use developments consistent with WAC 173-26-211(5)(d)(ii)(A) Clarifies "no net loss" of existing ecological function objective. Clarifies that compensatory mitigation should be in form of restoration or enhancement of shoreline functions, consistent with Section 5.07.01C.

Requested Revision Number	Page of 7-22-09 Draft	Section	AnMarco's Requested Revision	AnMarco's Comments
2	50	Table 6.06 Shoreline Reach Cedar River C, second sentence	Public physical access <u>to the shoreline</u> from a trail parallel to the water should be provided <u>within the setback/buffer contemplated by Table 6.09</u> as private lands on the north side of the river redevelop, integrated with vegetation conservation, and with <u>The public trail should be located within the setback/buffer to preserve existing native vegetation to the maximum extent feasible and should provide controlled public access to river viewpoints or to the water's edge, balanced with the goals of enhancement of shoreline ecological functions set forth in Section 5.07.01A.</u>	Clarifies public access to shoreline is also satisfied by controlled viewpoints, which may be more suitable for some portions of riverbank topography on the north side of Reach C. Clarifies shoreline enhancement goal reference.
3	57-58	Table 6.09, High Intensity Cedar River and Springbrook Creek column	<i>(1) Divide Cedar River and Springbrook Creek into separate columns in Table 6.09.</i>	Springbrook Creek and Cedar River are too different in character to appropriately combine in a single column.

Requested Revision Number	Page of 7-22-09 Draft	Section	AnMarCo's Requested Revision	AnMarCo's Comments
4	57 and 58 or 61(?)	Table 6.09, High Intensity Cedar River column	<p><i>In regard to both (1) the "Water Oriented Use" and "Non-Water Oriented Use" rows under the row heading "Building Setback from Ordinary High Water Mark (OHWM) and (2) the "Vegetation Conservation Buffer" row, add in connection with the High Intensity Cedar River column a new footnote that states:</i></p> <p><u>In site-specific cases (such as along the Old Stoneway Site's bulkheaded river frontage, which is currently largely unvegetated) where (a) a net gain in shoreline ecological functions can be achieved (such as by planting overhanging vegetation within the setback/buffer) and (b) public access to the shoreline can be achieved by means of a riverfront trail within the setback/buffer, the width of the setback/buffer shall be 50 feet.</u></p>	<p>The proposed footnote recognizes circumstances along the Cedar River where virtually no shoreline ecological functions currently exist and, without existing shoreline ecological functions to protect, a substantially narrower buffer than the 100-foot-width standard buffer is appropriate.</p>

Requested Revision Number	Page of 7-22-09 Draft	Section	AnMarCo's Requested Revision	AnMarCo's Comments
5	59	Table 6.09, High Intensity Cedar River column, Footnote (9), Cedar River Reach C	<p>Add the following introductory clause at the beginning of the existing text of the section of footnote (9) for Cedar River Reach C:</p> <p><u>Where building height greater than 35 feet will obstruct existing views of the Cedar River from public property or substantial numbers of existing residences (see RCW 90.58.320 and WAC 173-26-221(d)(iv)),...</u></p> <p>Add the following new sentence to the end of the existing text of the section of footnote (9) for Cedar River Reach C:</p> <p><u>However, where building height greater than 35 feet will not obstruct existing views of the Cedar River from public property or from substantial numbers of existing residences, the maximum building height over the entire distance from OHWM to the end of Shoreline jurisdiction shall be the maximum height established in RMC 4-2 for the underlying zone classification.</u></p>	Consistency with RCW 90.58.320 and WAC 173-26-221.
6	102	Table 8.01, Cedar River C row, last sentence	<p>Full standard b) <u>Buffers as defined in Table 6.09</u> shall be provided upon redevelopment of the north shore, subject to (a) public access set back from the water's edge, <u>which shall be established within such buffers</u>, and (b) <u>limited water oriented use adjacent to the water's edge, which may be established within such buffers.</u></p>	Resolves inconsistency in buffer widths between "full standard buffers" language in Table 8.01 and footnoted allowed reductions to buffers in Table 6.09 (including AnMarCo's requested revisions to that table).

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CITY OF RENTON
RECEIVED
SEP 11 2009
BUILDING DIVISION

September 11, 2009

HAND-DELIVERED

Renton Planning Commission
c/o City of Renton Planning Division
Attn: Erika Conkling, Senior Planner
1055 S. Grady Way, Sixth Floor
Renton, WA 98057

RE: The City of Renton's July 22, 2009 Draft Proposed SMP
Supplemental Public Hearing Testimony on Behalf of my Client AnMarCo

Dear Commission Members:

At the September 9, 2009 Planning Commission SMP Workshop, I addressed the Commission on behalf of my client AnMarCo, the owner of the Old Stoneway Site located at 1915 Maple Valley Highway along the Cedar River, and submitted a table setting forth AnMarCo's proposed text revisions to the City of Renton's July 22, 2009 Draft proposed Shoreline Master Program (the "Draft SMP"). Also at that workshop, Andrew C. Kindig, PhD submitted his letter to the Commission prepared at AnMarCo's request addressing shoreline issues at the Old Stoneway Site relating to the Draft SMP, a subject that he spoke to you about extensively during that evening's workshop. As I promised, I am now submitting this letter to you further elaborating on the reasoning for AnMarCo's proposed text changes set forth in the table that I submitted to you during the September 9, 2009 workshop. (A copy of that table, with a few minor revisions, which I have shaded, is attached to this letter as Exhibit A.)

**Background Information Concerning the Old Stoneway Site
along the Cedar River's North Edge**

For detailed background information concerning the Old Stoneway Site, please see the September 11, 2009 Standard Stream Report concerning the Old Stoneway Site jointly prepared for AnMarCo by Dr. Kindig of A.C. Kindig & Co. and by fisheries biologist Carl Hadley of Cedarock Consultants, Inc. and the Appendix to that report. With this letter, I am submitting nine copies of that report for the Commission members' use, along with one intended for the recording clerk as part of the record of the SMP proceedings (plus a copy for each of this letter's cc recipients listed on this letter's last page).

Renton Planning Commission
c/o City of Renton Planning Division
Attn: Erika Conkling, Senior Planner
September 11, 2009
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**A Few Overarching Points Applicable to the
Preparation of the Proposed SMP**

Please consider the following overarching points in your review of the Draft SMP and your consideration of AnMarCo's requested text revisions.

**The Shoreline Management Act's "Protection"
Policy and the "No Net Loss of Shoreline
Ecological Functions" Principle Derived from It**

RCW 90.58.020 (which is part of the Shoreline Management Act) notes (in part) that:

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. **This policy contemplates protecting¹ against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life**, while protecting generally public rights of navigation and corollary rights incidental thereto.

¹ In regard to shorelines of statewide significance, RCW 90.58.020 also states that

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and **local government, in developing master programs for shorelines of statewide significance**, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

Note that this order of preference in the Shoreline Management Act does not apply to those shorelines of the state that are not shorelines of statewide significance. The Cedar River is not a shoreline of statewide significance.

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Attn: Erika Conkling, Senior Planner
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(Emphasis added.) With protection of shoreline ecological functions and values in mind, Chapter 173-26 WAC (State master program approval/amendment procedures and master program guidelines) repeatedly directs that local master programs include regulations ensuring that shoreline development cause *no net loss of shoreline ecological functions*. However, except to the extent necessary to avoid no net loss of shoreline ecological functions, Chapter 173-26 WAC does not direct that local master programs include regulations requiring shoreline *restoration or enhancement* in connection with shoreline development of private property.

Note that the no net loss principle makes the City's inventory of existing shoreline ecological functions very important. Because the City's November 2008 Draft Shoreline Inventory and Characterization failed to note the Old Stoneway Site's lack of existing shoreline ecological functions, the September 11, 2009 Standard Stream Report concerning the Old Stoneway Site jointly prepared by Dr. Kindig and Carl Hadley is intended to fill that void in the data that is before the Planning Commission.

**WAC Governing Principles Concerning
Achievement of Master Program Policies (1) by
Means Other Than Regulation of Development
and (2) Only by Means that are Lawful**

Chapter 173-26 WAC stresses that (a) the planning policies and regulatory provisions of master programs may be achieved by means other than the regulation of development and (b) relevant constitutional and legal limitations that protect private property rights must be respected. Among other statements in Chapter 173-26 WAC to that effect is the following excerpt from WAC 173-26-186 (Governing principles of the guidelines):

The governing principles listed below are intended to articulate a set of foundational concepts that underpin the guidelines, *guide the development of the planning policies and regulatory provisions of master programs*, and provide direction to the department in reviewing and approving master programs. **These governing principles, along with the policy statement of RCW 90.58.020, other relevant provisions of the act, the regulatory reform policies and provisions of RCW 34.05.328, and the policy goals set forth in WAC 173-26-176 and 173-26-181 should be used to assist in interpretation of any ambiguous provisions and reconciliation of any conflicting provisions of the guidelines.**

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*

(4) The planning policies of master programs (as distinguished from the development regulations of master programs) may be achieved by a number

of means, only one of which is the regulation of development. Other means, as authorized by RCW 90.58.240, **include, but are not limited to:** The acquisition of lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other local governments; and accepting grants, contributions, and appropriations from any public or private agency or individual. Additional other means may include, but are not limited to, public facility and park planning, watershed planning, voluntary salmon recovery projects and incentive programs.

(5) The policy goals of the act, implemented by the planning policies of master programs, may not be achievable by development regulation alone. **Planning policies should be pursued *through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations (where applicable, statutory limitations such as those contained in chapter 82.02 RCW and RCW 43.21C.060) on the regulation of private property.* Local government should use a process designed to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights.**

(Emphasis added.)

RCW 82.02.020

During the series of Planning Commission SMP workshops over the course of the last year, I have from time to time pointed out that RCW 82.02.020 (State preempts certain tax fields — Fees prohibited for the development of land or buildings — Voluntary payments by developers authorized — Limitations — Exceptions) provides a statutory limitation on local government's ability to impose restrictions on private land development. A July 7, 2008 decision of the Washington Court of Appeals, *Citizens' Alliance for Property Rights v. Sims*, 145 Wn. App. 649, 187 P.3d 786 (2008) (copy attached), is illustrative.

In *Sims*, a political action committee, plus five individuals whose lands were subject to the King County Grading Code (Chapter 16.82 KCC), sued then-King County Executive Ron Sims alleging, among other things, that KCC 16.82.150, which limited clearing on property zoned rural area residential (RA) to a maximum of 50 percent, depending on the size of the parcel and **unrelated to any evaluation of the demonstrated impact of proposed development**, on its face violates RCW 82.02.020. The Washington Court of Appeals agreed with that allegation and remanded the case to the Superior Court for entry of an order in the plaintiffs' favor. The Sims court began its analysis with the following summary of RCW 82.02.020:

RCW 82.02.020 generally provides, with some exceptions, that the state preempts the field of imposing certain taxes." The statute states in relevant part:

Except as provided in *RCW 82.02.050 through 82.02.090*, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on ... the development, subdivision, classification, or reclassification of land.

13 There are exceptions to this general prohibition. *RCW 82.02.020* "does not preclude dedications of land or easements within the proposed development or plat **which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.**"

14 "*RCW 82.02.020* requires strict compliance with its terms. A tax, fee, or charge, either direct or indirect, imposed on development is invalid unless it falls within one of the exceptions specified in the statute."

15 **The burden to prove that a condition is reasonably necessary as a direct result of the proposed development is on the governmental entity imposing the requirement.**

Sims, 145 Wn. App. 649 at 656-657 (footnoted citations omitted; italics in the original; boldfacing and underlining added for emphasis). At 145 Wn. App. 662, the *Sims* court concluded that the clearing limitations of KCC 16.82.150 were an in-kind, indirect "tax, fee, or charge" on development for purposes of *RCW 82.02.020*. At 145 Wn. App. 665-671, the *Sims* court continued:

38 The next and more difficult question is whether the County bore its burden to show that these clearing requirements fall within any exception stated in *RCW 82.02.020*. We conclude that the County has failed to do so.

39 The trial court concluded in its memorandum on the summary judgment motions that the County had evaluated the overall impacts of the effects of clearing in rural areas and satisfied the **nexus requirement of RCW 82.02.020**. However, the court made no mention of the **rough proportionality requirement**.² This was error.

² At footnote 42 set forth at this point of the *Sims* decision, the *Sims* court set forth the following case citations:

See Dolan, 512 U.S. at 391 (requiring "rough proportionality" between required dedication and impact of proposed development).

¶40 *RCW 82.02.020* mandates that a government imposing requirements such as the clearing limits here demonstrate that the restriction is "**reasonably necessary as a direct result of the proposed development or plat.**" ⁴³ Our supreme court has repeatedly held that **this statute requires "that development conditions must be tied to a specific, identified impact of a development on a community."** ⁴⁴ The plain language of the statute does not permit conditions that are reasonably necessary for *all* development, or *any potential* development. ⁴⁵ Rather, the statute specifically requires that a condition be "reasonably necessary as a direct result of *the proposed* development." ⁴⁶

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*
*

48 The failings of the ordinance before us are highlighted by the precise point made in *Trimen* and the dissent in this court's decision in *Henderson Homes*. **KCC 16.82.150 imposes a uniform requirement for cleared area on each lot, unrelated to any evaluation of the demonstrated impact of proposed development.** While the ordinance before us prescribes clearing limits in proportion to the size of the lot, it fails to relate the clearing limit to the nature and extent of the proposed development on the lot. Although KCC 16.82.150 contains other criteria, none address **the requirement that the clearing limits be impact specific, as the statute requires.** Thus, the necessary proportionality that is required to fulfill the statutory exception is not satisfied.

¶49 The parties dispute whether King County has shown a nexus between the identified harm and the proposed solution. *Burton v. Clark County* states **the applicable [nexus] standard:**

[T]he government must show that the development for which a permit is sought will create or exacerbate the identified public problem. This is the same as to say that there must be a relationship (nexus) between the development and the identified public problem; that the necessary relationship will exist if the development will create or exacerbate the identified problem; but that the necessary relationship will not exist if the development will not adversely impact the identified public problem. Thus, the *Nollan [v. California Coastal Commission, 483 U.S. 825, 831, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987)]* Court rejected an

easement that would have improved public access to the beach, even though the Commission's staff report said improved public access was needed, because the Nollans' project, replacing a bungalow with a new house, would not make the identified public problem, lack of public access, any worse than before. Similarly, the *Dolan* court rejected Tigard's exaction of a floodplain easement that would have enhanced the public's recreational opportunities, even though such opportunities were needed, because Dolan's project, a larger retail outlet, would not make the identified public problem, the public's lack of recreational opportunities, any worse than before. **These holdings are consistent with the fundamental purpose of the Takings Clause, which is *not* to bar government from requiring a developer to deal with problems of the developer's own making, but which is "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."**³

¶50 Here, the trial court correctly determined that the record establishes the required nexus. As the trial court stated, the County has submitted a wealth of unchallenged evidence that shows a nexus between excessive clearing and the proposed solution limiting clearing.

¶51 Nevertheless, [HN16] *RCW 82.02.020* requires both a nexus and rough proportionality for a dedication to fall within the exception. **Because both are not present in this case, the ordinance violates the state statute.**

(Some citations omitted; italics in the original; boldfacing and underlining added for emphasis.)

**Reasoning for AnMarCo's Proposed Changes
to the Text of the Draft SMP**

In this section of the letter, I reference AnMarCo's six numbered request items set forth on the attached table and elaborate on the reasoning for those requests.

³ At footnote 59 set forth at this point of the *Sims* decision, the *Sims* court set forth the following case citations:

Burton v. Clark County, 91 Wn. App. 505, 521-22, 958 P.2d 343 (1998) (footnotes omitted) (quoting *Dolan*, 512 U.S. at 384).

Renton Planning Commission
c/o City of Renton Planning Division
Attn: Erika Conkling, Senior Planner
September 11, 2009
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AnMarCo's Requested Revision 1

First Part (Dealing with Mixed Use Developments)

As I pointed out to you at the September 9, 2009 workshop, to make clear that the High Density Overlay on the Cedar River is to provide opportunity for **"mixed-use commercial, office and residential developments where underlying zoning is COR under RMC 4-2"**, AnMarCo requests the revision set forth in the attached table concerning Draft SMP Section 5.07.01A's first sentence. Including that phrase in that sentence is important because opportunities for mixed-use development in the COR zone is a central feature of the COR zone classification and there should be no uncertainty about that left in the SMP. Note that WAC 173-26-211(5)(d)(ii)(A) makes clear that mixed use developments are allowed in the "high-intensity" shoreline environment. That section states:

(A) In regulating uses in the "high-intensity" environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. **Nonwater-oriented uses should not be allowed except as part of mixed use developments.** Nonwater-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline. **Such specific situations should be identified in shoreline use analysis or special area planning, as described in WAC 173-26-200 (3)(d).**

In view of that section's last sentence, AnMarCo hereby requests appropriate shoreline use analysis or special area planning relating to nonwater-oriented uses on the Old Stoneway Site.

Second Part (Replacing General "Restoration" Language with "No Net Loss Language")

In view of the nexus and rough proportionality requirements described in the above excerpts from *Citizens' Alliance for Property Rights v. Sims*, 145 Wn. App. 649, 187 P.3d 786 (2008), the assertion in Draft SMP Section 5.07.01A's second sentence that "[d]evelopment should protect existing ecological functions **and restore ecological functions in areas that have been previously degraded**" is illegally overbroad, on its face violating RCW 82.02.02. AnMarCo's revision to that sentence is an attempt to remedy that overbreadth.

AnMarCo's Requested Revision 2

AnMarCo's requested revision 2 is for clarification. With AnMarCo's comments on it in the attached table, the reasons for the request are evident and the request is obviously appropriate.

AnMarCo's Requested Revision 3

AnMarCo's requested revision 3 stems from (a) Springbrook Creek and Cedar River being too different in character to appropriately combine in a single column of City-proposed Table 6.09 and (b) having AnMarCo's requested revisions 4, 5, and 6 in mind (which are intended to only relate to the Cedar River).

AnMarCo's Requested Revision 4

AnMarCo's requested revision 4 (requesting a 50-foot building setback/buffer) addresses the fact that circumstances exist along Cedar River Reach C (along the Old Stoneway's site's frontage) where (a) no shoreline ecological functions exist⁴ (at least not beyond 50 feet landward of the Ordinary High Water Line) and (b) further width would have little added benefit to shoreline function⁵. In view of that fact, the City cannot meet the nexus and rough

⁴ Page 1 of the September 11, 2009 Standard Stream Report concerning the Old Stoneway Site jointly prepared by Dr. Kindig and by fisheries biologist Carl Hadley states:

As discussed later in this report, the Old Stoneway Site is the only site within Reach C that contains **virtually no existing vegetation** aside from a narrow fringe along the Cedar River and some vegetation at the site's southeasterly point.

(Emphasis added.) For more details, see section 2.2 of that report on pages 3 and 4 thereof.

⁵ Page 6 of the September 11, 2009 Standard Stream Report concerning the Old Stoneway Site states:

Vegetation overhanging a stream can contribute leaves, vegetative litter, and small woody debris directly to stream channels. This material serves as a source of food for aquatic invertebrates, which are in turn eaten by fish. Terrestrial insects, another food source, also utilize riparian vegetation as habitat. **The majority of such organic material deposited in a stream comes from directly over the stream. Function diminishes rapidly after about 25 feet from channel's edge although some benefit is still realized up to about 50 feet away.**

(Emphasis added.) In addition, Dr. Kindig states on pages 3 and 4 of his September 8, 2009 letter to the Planning Commission:

Building Setback/Buffer Width

Where the bulkhead exists along the eastern approximately 79 percent of the Old Stoneway Site's Cedar River frontage, the July 22, 2009 draft-proposed minimum building setbacks and buffers substantially exceed the width necessary to contain public access and shoreline function enhancements. Public access by means of a riverfront trail providing views of the river would be uniquely afforded by the bulkhead. The bulkhead has long ago severed nearly all shoreline ecological functions from the site, particularly where the ordinary high water mark lies along the face of the bulkhead. (The ordinary high water mark will be shown on a map contained in the Old Stoneway Site Stream Assessment Report to be submitted by September 11, 2009.) **In conjunction with future redevelopment of the Old Stoneway Site, native overhanging**

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Attn: Erika Conkling, Senior Planner
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proportionality requirements of RCW 82.02.020 described in *Citizens' Alliance for Property Rights v. Sims*, 145 Wn. App. 649, 187 P.3d 786 for a building setback/buffer that is wider than 50 feet. AnMarCo's requested revision 4 is an attempt to remedy that.

AnMarCo's Requested Revision 5

AnMarCo's requested revision 5 is intended to harmonize the provisions of Draft SMP Table 6.09's building height limitations for the High Intensity Cedar River environment with RCW 90.58.320, WAC 173-26-221, and the nexus and rough proportionality requirements that the City must meet under RCW 82.02.020.

First, note that in view of RCW 90.58.320, no basis exists in the Shoreline Management Act to keep building heights within the High Intensity Cedar River environment (or elsewhere, for that matter) lower than allowed in the underlying zoning districts where the portion of the building height in excess of 35 feet above average grade level will not obstruct the water views of a significant number of residences outside of the proposed development. RCW 90.58.320 (Height limitation respecting permits) states:

No permit shall be issued pursuant to this chapter for any new or expanded building or structure of **more than thirty-five feet above average grade level** on shorelines of the state **that will obstruct the view of a *substantial number of residences* on areas adjoining such shorelines** except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

vegetation could be established along the length of the top of the bulkhead with its attendant beneficial functions to the shoreline. A 50-foot wide buffer zone at the bulkhead is sufficiently wide to provide for both (a) public access and (b) shoreline ecological function enhancement in the form of overhanging native vegetation to the potential the bulkhead allows. Widening the buffer further at this location (as the draft July 2009 SMP text calls for) **would not increase shoreline functions further.** A wider buffer at this location would, however, reduce development potential under COR zoning at the east and narrowest portion of the site. If the City wishes to achieve COR zoning objectives at this site, the proposed SMP should not limit COR redevelopment more than is reasonably necessary in order to restore shoreline functions to their potential with the bulkhead in place.

In my view, the draft July 2009 SMP text should be revised as set forth in AnMarCo's September 8, 2009 requested text revisions 1 through 4 and 6 in order to (1) provide clarity in regard to the criteria for location of the public trail in the buffer and (2) **limit the building setback/buffer to 50 feet along the bulkhead because this is a width within which a net shoreline function gain can readily be achieved and further width would have little added benefit to shoreline function.**

(Emphasis added.)

Renton Planning Commission
c/o City of Renton Planning Division
Attn: Erika Conkling, Senior Planner
September 11, 2009
Page 11

(Emphasis added.) Thus, AnMarCo's requested revision 5 is consistent with the Act.

Second, Dr. Kindig points out on page 4 of his September 8, 2009 letter to the Planning Commission the following:

Note that the July 2009 Draft SMP's regulation for maximum building height has no ecological basis under SMP guidelines and only pertains to view management.

Third, bear in mind that the public trail requirement set forth in Table 6.06 in relation to Cedar River Reach C (as AnMarCo requests that it be revised under AnMarCo's requested revision 2) would provide extensive public visual access to the Cedar River along the entire length of the north bank of Cedar River Reach C. This will satisfy WAC 173-26-221(4)(b)(iii)'s assertion that "[l]ocal master programs shall . . . [t]o the greatest extent feasible consistent with the overall best interest of the state and the people generally, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including **views of the water**". (Emphasis added.)

AnMarCo's Requested Revision 6


As noted in AnMarCo's comments on the attached table corresponding to AnMarCo's requested revision 6, AnMarCo's requested revision 6 is intended to resolve the inconsistency in buffer widths between "full standard buffers" language in Draft SMP Table 8.01 and footnoted allowed reductions to buffers in Draft SMP Table 6.09 (including AnMarCo's requested revisions to that table).

Thank you for your consideration of this letter and companion materials and for your long work on the Commission concerning the proposed SMP. Should you have any questions or comments concerning this submittal, please feel free to phone me at (206) 443-4684 or email me at davidhalinen@halinenlaw.com.

Thank you for your cooperation.

Sincerely,

HALINEN LAW OFFICES, P.S.


David L. Halinen

Attachment (AnMarCo's Corrected Requested Revisions Table)

Enclosures (copies of Standard Stream Report)

Renton Planning Commission
c/o City of Renton Planning Division
Attn: Erika Conkling, Senior Planner
September 11, 2009
Page 12

cc: AnMarCo
Attn: Donald J. Merlino, Partner (with copies of attachment and enclosures)

Andrew C. Kindig, PhD, A.C. Kindig & Co. (with copies of attachment and enclosures)

Carl Hadley, Cedarock Consultants, Inc. (with copies of attachment and enclosures)

City of Renton Planning Division
Attn: C. E. "Chip" Vincent, Planning Director (with copies of attachment and enclosure)
Attn: Erika Conkling, Senior Planner (with copies of attachment and enclosures)

Renton Shoreline Master Program PMX Revisions, July 22, 2009
AnMarCo's Requested Revisions (Proposed new text **underlined and boldfaced**; existing text proposed to be deleted are illustrated by ~~strikethrough~~)
9-8-09 (with 9-11-09 corrections)

Requested Revision Number	Page of 7-22-09 Draft	Section	AnMarCo's Requested Revision	AnMarCo's Comments
1	36	5.07.01A	Objective: The objective of the High Intensity Overlay on the Cedar River is to provide opportunities for large-scale office and commercial uses, <u>mixed-use commercial, office and residential developments where underlying zoning is COR under RMC 4-2,</u> and industrial employment centers consistent with the Comprehensive Plan and underlying zoning for specific areas. <u>Each future Ddevelopment should protect and preserve existing ecological functions and restore ecological functions in areas that have been previously degraded should mitigate project impacts by restoring or enhancing shoreline ecological functions to the extent necessary to assure that each development project will cause no net loss of shoreline ecological functions.</u>	Provides for mixed-use developments consistent with WAC 173-26-211(5)(d)(ii)(A). Clarifies "no net loss" of existing ecological function objective. Clarifies that compensatory mitigation should be in form of restoration or enhancement of shoreline functions, consistent with Section 5.07.01C.

Requested Revision Number	Page of 7-22-09 Draft	Section	AnMarCo's Requested Revision	AnMarCo's Comments
2	50	Table 6.06 Shoreline Reach Cedar River C, second sentence	Public physical access to the shoreline from a trail parallel to the water should be provided <u>within the setback/buffer contemplated by Table 6.09</u> as private lands on the north side of the river redevelopment. <u>integrated with vegetation conservation, and with The public trail should be located within the setback/buffer to preserve existing native vegetation to the maximum extent feasible and should provide controlled public access to river viewpoints or to the water's edge, balanced with the goals of enhancement of shoreline ecological functions set forth in Section 5.07.01A.</u>	Clarifies public access to shoreline is also satisfied by controlled viewpoints, which may be more suitable for some portions of riverbank topography on the north side of Reach C. Clarifies shoreline enhancement goal reference.
3	57-58	Table 6.09, High Intensity Cedar River and Springbrook Creek column	(1) Divide Cedar River and Springbrook Creek into separate columns in Table 6.09.	Springbrook Creek and Cedar River are too different in character to appropriately combine in a single column.

Requested Revision Number	Page of 7-22-09 Draft	Section	AnMarCo's Requested Revision	AnMarCo's Comments
4	57 and 58 or 61(?)	Table 6.09, High Intensity Cedar River column	<p>In regard to both (1) the "Water Oriented Use" and "Non-Water Oriented Use" rows under the row heading "Building Setback from Ordinary High Water Mark (OHWM)" and (2) the "Vegetation Conservation Buffer" row, add in connection with the High Intensity Cedar River column a new footnote that states:</p> <p><u>In site-specific cases (such as along the Old Stoneway Site's bulkheaded river frontage, which is currently largely unvegetated) where (a) a net gain in shoreline ecological functions can be achieved (such as by planting overhanging vegetation within the setback/buffer) and (b) public access to the shoreline can be achieved by means of a riverfront trail within the setback/buffer, the width of the setback/buffer shall be 50 feet.</u></p>	<p>The proposed footnote recognizes circumstances along the Cedar River where virtually no shoreline ecological functions currently exist and, without existing shoreline ecological functions to protect, a substantially narrower buffer than the 100-foot-width standard buffer is appropriate.</p>

Requested Revision Number	Page of 7-22-09 Draft	Section	AnMarCo's Requested Revision	AnMarCo's Comments
5	59	Table 6.09, High Intensity Cedar River column, Footnote (9), Cedar River Reach C	<p>Add the following introductory clause at the beginning of the existing text of the section of footnote (9) for Cedar River Reach C:</p> <p><u>Where building height greater than 35 feet will obstruct existing views of the Cedar River from public property or substantial numbers of existing residences (see RCW 90.58.320 and WAC 173-26-221(4)(d)(iv)),...</u></p> <p>Add the following new sentence to the end of the existing text of the section of footnote (9) for Cedar River Reach C:</p> <p><u>However, where building height greater than 35 feet will not obstruct existing views of the Cedar River from public property or from substantial numbers of existing residences, the maximum building height over the entire distance from OHWM to the end of Shoreline jurisdiction shall be the maximum height established in RMC 4-2 for the underlying zone classification.</u></p>	Consistency with RCW 90.58.320 and WAC 173-26-221.
6	102	Table 8.01, Cedar River C row, last sentence	<p>Full standard <u>Buffers as defined in Table 6.09</u> shall be provided upon redevelopment of the north shore, subject to <u>(a)</u> public access set back from the water's edge, <u>which shall be established within such buffers</u>, and <u>(b)</u> limited water oriented use adjacent to the water's edge, <u>which may be established within such buffers</u>.</p>	Resolves inconsistency in buffer widths between "full standard buffers" language in Table 8.01 and footnoted allowed reductions to buffers in Table 6.09 (including AnMarCo's requested revisions to that table).

Rec'd 9-9-09

A.C. Kindig & Co.

ENVIRONMENTAL CONSULTING

65 Cottonwood Drive Wolf Creek

Winthrop, WA 98862

(425) 638-0358

September 8, 2009

City of Renton Planning Commission
1055 S. Grady Way
Renton, WA 98057

RE: Shoreline Master Program Update; Cedar River Reach 3; Old Stoneway Site

Dear Planning Commission Members:

At the request of AnMarCo, the owner of the Old Stoneway Site, which is approximately 12.5 acres in size located at 1915 Maple Valley Highway, I am writing to comment on various aspects of the July 22, 2009 draft City of Renton Shoreline Master Program (SMP) Amendments.

Stream Assessment Report

At the request of AnMarCo, Carl Hadley (a fisheries biologist with Cedarrock Consultants, Inc.) and I have conducted a stream assessment of the Old Stoneway Site that fronts approximately 1,480 feet of the north bank of the Cedar River. We will have a standard stream assessment report completed for submittal into the record of the SMP Amendments by this Friday, September 11, 2009. During 2003, Carl Hadley and I were the City of Renton's consultants who prepared the Best Available Science (BAS) review for the City's last major Critical Areas Ordinance (CAO) update and provided stream buffer recommendations for streams throughout Renton, including the Cedar River¹. Due to our previous consulting experience with the City and other work we have done in relation to the Cedar River, Carl Hadley and I are both well acquainted with the conditions of the Cedar River and buffer-related issues along the river. We are also both well acquainted with the stream function assessment principles used by the City for purposes of individual site assessment purposes in conjunction with development project review. The stream assessment report that we will be submitting will be based upon those principles and will be formatted in the City's "Standard Stream Report" format.

¹ A.C. Kindig & Co. and Cedarrock Consultants, Inc. February 27, 2003. City of Renton Best Available Science Literature Review and Stream Buffer Recommendations.

**Unique Characteristics of the Old Stoneway Site
that Relate to the SMP Amendments**

The stream assessment shows the Old Stoneway Site has unique characteristics that afford both constraints and opportunities in siting a redevelopment project that would achieve both (1) the objectives of the site's COR Comprehensive Plan designation and COR zoning², and (2) the objectives of the SMP to preserve and protect existing ecological functions of the shoreline (i.e., no net loss of shoreline ecological functions). It is our opinion that any redevelopment of this site—a site that has a long history of industrial use and that has been and continues to be largely bare of vegetation—will necessarily result in enhancement and restoration of many ecological functions to varying degrees along the entire shoreline.

In writing this letter, we assume that the existing bulkhead, which lies along about 79 percent of the site's river frontage, is likely to remain in place in conjunction with site redevelopment. This assumption is made because it would certainly be possible to (1)

² The purpose statement for the COR Comprehensive Plan designation as well as Comprehensive Plan Land Use Policies LU-272 and LU-273 are as follows:

COMMERCIAL/OFFICE/RESIDENTIAL LAND USE DESIGNATION

Purpose Statement: The Commercial/Office/Residential (COR) designation provides opportunities for large-scale office, commercial, retail, and multi-family projects developed through a master plan and site plan process incorporation significant site amenities and/or gateway features. COR sites are typically transitions from an industrial use to a more intensive land use. The sites offer redevelopment opportunities on Lake Washington and/or the Cedar River. Commercial/Office/Residential zoning implements the COR land use designation.

Policy LU-272. Uses in Commercial/Office/Residential designations should include mixed-use complexes consisting of office, and/or residential uses, recreational and cultural facilities, hotel and convention center type development, technology research and development facilities; and corporate headquarters.

Policy LU-273. Commercial uses such as retail and services should support the primary uses of the site and be architecturally and functionally integrated into the development.

Similarly, the purpose and intent statement for the COR zone classification, which is set forth in RMC 4-2-0200 states:

O. COMMERCIAL/OFFICE/RESIDENTIAL ZONE (COR):

The purpose of the Commercial/Office/Residential Zone (COR) is to provide for a mix of intensive office, hotel, convention center, and residential activity in a high-quality, master-planned development that is integrated with the natural environment. Commercial retail and service uses that are architecturally and functionally integrated are permitted. Also, commercial uses that provide high economic value may be allowed if designed with the scale and intensity envisioned for the COR Zone. The scale and location of these sites will typically denote a gateway into the City and should be designed accordingly.

mitigate impacts of any redevelopment of the site, and (2) mitigate cumulative impacts of Old Stoneway redevelopment with reasonably foreseeable future developments in the watershed, without bulkhead removal and corresponding extensive riverbank re-grading. We expect that any redevelopment would certainly enhance existing shoreline functions at this site in excess of any compensation for site-specific impacts and cumulative impacts from anticipated future development, leading to a net gain in shoreline functions.

My Comments on Portions of the Draft Proposed SMP

The presence of the existing bulkhead is a fact. Because of the bulkhead, in my opinion the proposed SMP should include code language flexible enough to encourage a more appropriate placement of future development on the Old Stoneway Site than is possible with the July 22, 2009 draft SMP text (for example Section 5.07.01A and Tables 6.06, 6.09, and 8.01). In view of the extensive length of the site's river frontage and bulkhead, several revisions ought to be made to the proposed text.

A copy of a table from AnMarCo setting forth AnMarCo's September 8, 2009 proposed text revisions is attached. I comment below on the rationale for several of AnMarCo's proposed text revisions.

Building Setback/Buffer Width

Where the bulkhead exists along the eastern approximately 79 percent of the Old Stoneway Site's Cedar River frontage, the July 22, 2009 draft-proposed minimum building setbacks and buffers substantially exceed the width necessary to contain public access and shoreline function enhancements. Public access by means of a riverfront trail providing views of the river would be uniquely afforded by the bulkhead. The bulkhead has long ago severed nearly all shoreline ecological functions from the site, particularly where the ordinary high water mark lies along the face of the bulkhead. (The ordinary high water mark will be shown on a map contained in the Old Stoneway Site Stream Assessment Report to be submitted by September 11, 2009.) In conjunction with future redevelopment of the Old Stoneway Site, native overhanging vegetation could be established along the length of the top of the bulkhead with its attendant beneficial functions to the shoreline. A 50-foot wide buffer zone at the bulkhead is sufficiently wide to provide for both (a) public access and (b) shoreline ecological function enhancement in the form of overhanging native vegetation to the potential the bulkhead allows. Widening the buffer further at this location (as the draft July 2009 SMP text calls for) would not increase shoreline functions further. A wider buffer at this location would, however, reduce development potential under COR zoning at the east and narrowest portion of the site. If the City wishes to achieve COR zoning objectives at this site, the proposed SMP should not limit COR redevelopment more than is reasonably necessary in order to restore shoreline functions to their potential with the bulkhead in place.

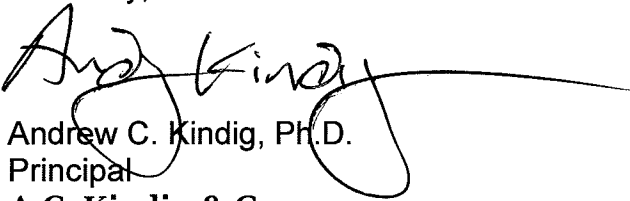
In my view, the draft July 2009 SMP text should be revised as set forth in AnMarCo's September 8, 2009 requested text revisions 1 through 4 and 6 in order to (1) provide clarity in regard to the criteria for location of the public trail in the buffer and (2) limit the building setback/buffer to 50 feet along the bulkhead because this is a width within which a net shoreline function gain can readily be achieved and further width would have little added benefit to shoreline function.

Maximum Building Height Issues

We also note that the proposed SMP code would limit COR redevelopment to 35 feet in height at the shoreline setback, even though the underlying COR zoning has a 10-story/125-foot height limitation. The only basis for a 35-foot height limitation under the Shoreline Management Act is to protect against obstruction of water views from a substantial number of existing residences.³ The City should revise its July 22, 2009 draft SMP to provide that where building height greater than 35 feet will not obstruct existing views of the Cedar River from public property or from substantial numbers of existing residences, the maximum building height shall be the maximum height established in RMC 4-2 for the underlying zone classification. Such a provision is set forth in AnMarCo's requested revision number 5 on the attached table of AnMarCo's September 8, 2009 proposed revisions to the July 2009 Draft SMP. (Alternatively, the City could make the view obstruction potential determination now for the north bank of Cedar River Reach 3, and revise the proposed SMP code accordingly.) Note that the July 2009 Draft SMP's regulation for maximum building height has no ecological basis under SMP guidelines and only pertains to view management.

I look forward to addressing you in person at the September 9, 2009 Planning Commission meeting.

Sincerely,



Andrew C. Kindig, Ph.D.
Principal
A.C. Kindig & Co.

³ RCW 90.58.320 (Height limitation respecting permits) states:

No permit shall be issued pursuant to this chapter [Chapter 90.58, the Shoreline Management Act] for any new or expanded building or structure of **more than thirty-five feet** above average grade level on shorelines of the state **that will obstruct the view of a substantial number of residences on areas adjoining such shorelines** except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

(Emphasis added.)

Renton Shoreline Master Program PMX Revisions, July 22, 2009

AnMarCo's Requested Revisions (Proposed new text **underlined and boldfaced**; existing text proposed to be deleted are illustrated by ~~strikethrough~~)

9-8-09

Requested Revision Number	Page of 7-22-09 Draft	Section	AnMarCo's Requested Revision	AnMarCo's Comments
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Requested Revision Number	Page of 7-22-09 Draft	Section	AnMarCo's Requested Revision	AnMarCo's Comments
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CITY OF RENTON
RECEIVED

SEP 11 2009

BUILDING DIVISION

A.C. Kindig & Co.
ENVIRONMENTAL CONSULTING

**“OLD STONEWAY SITE”
1915 Maple Valley Highway**

STANDARD STREAM REPORT

City of Renton

Prepared for:

AnMarCo
9125 10th Ave S.
Seattle, WA 98108

Prepared by:

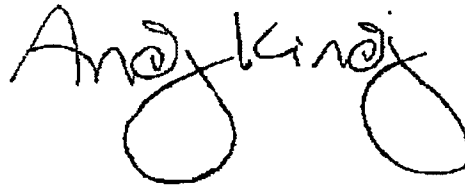
A.C. Kindig & Co.
65 Cottonwood Drive
Winthrop, WA 98862

and

Cedarock Consultants, Inc.
19609 244th Avenue NE
Woodinville, WA 98077

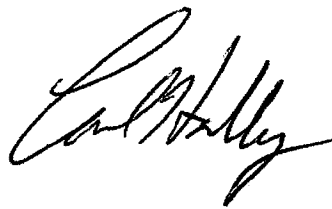
September 11, 2009
Project No. 275

Report Prepared by:



Andrew C. Kindig, Ph.D.
Principal, A.C. Kindig & Co.
(425) 638-0358

and



Carl Hadley
Principal, Cedarock Consultants, Inc.
(425) 788-0961

Site Map for this Report Prepared by:

Triad Associates, Inc.
Don Hill, P.E. (Project Manager)

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APPENDICES

Site Map (September 11, 2009)
Grading Plan – Not Included (*Not applicable*)
Wetland Assessment Report (May 22, 2008)

1.0 INTRODUCTION

Background of the Old Stoneway Site

AnMarCo owns the approximately 12.67-acre Old Stoneway Site in Renton fronting approximately 1,480 feet of the Cedar River's northeast edge (see attached Site Exhibit). The site is the historic site of Stoneway Concrete and related heavy industrial operations that date back to the 1930s. Per the City's request, Stoneway Concrete's concrete batching facilities were removed from the subject site earlier this decade for aquifer protection (because concrete batching involved the use of chemicals that the City was concerned could pose a contamination threat to the City's well fields located in the adjacent Cedar River Park to the north). As a continuation of the historic industrial use of the site, the site is currently being used for staging and storing of construction materials, heavy equipment and construction vehicles.

The SMP Update and the Reason for This Stream Report

The City of Renton is currently in the process of updating its Shoreline Master Program (SMP). For analysis purposes, the City's consultant for the SMP update, Parametrix, has divided the length of the portion of the Cedar River lying within Renton into four reaches, and has included the Old Stoneway Site within roughly what has been identified as Cedar River Reach C (also referenced as Reach 3 in some documents). Reach C extends from I-405 to the west to the first Maple Valley Highway bridge crossing to the east. Approximately the east 1,170 feet of the site's river frontage has an existing concrete bulkhead. As discussed later in this report, the Old Stoneway Site is the only site within Reach C that contains virtually no existing vegetation aside from a narrow fringe along the Cedar River and some vegetation at the site's southeasterly point.

The City recently issued a July 22, 2009 draft SMP update. If adopted without modification, some provisions of the draft would restrict future development potential of the Old Stoneway Site. It is our assessment that these restrictions at this site would go beyond those necessary to preserve and protect existing shoreline ecological functions. Moreover, because of the unique nature of this particular site, some elements of the SMP could discourage shoreline enhancement opportunities the site affords and unnecessarily restrict buildout under the COR zoning that the City has designated for the site. Accordingly, an assessment of the existing environmental potential of this segment of the Cedar River shoreline within Reach C is important to consideration of changes to the existing SMP.

The "Standard Stream Study" Format That This Report Uses

Because the Old Stoneway Site lies within one hundred feet of the Cedar River (Figure 1), in conjunction with a development application for the site the City of Renton would

ordinarily request a "Standard Stream Study" pursuant to Renton Municipal Code (RMC) Section 4-8-120D.19. Standard Stream Studies are generally required by the City for a development that would not (1) alter the stream (in this case, the Cedar River) or (2) adversely affect the associated shoreline. For that reason, we followed the standard stream report format set forth in RMC Section 4-8-120D.19 to explain the Old Stoneway site's existing shoreline functions and values for the City's consideration in its current SMP updating process.

Because the Old Stoneway site's shoreline is nearly flat and for the most part bare of vegetation, we expect that any future development will improve and restore many shoreline ecological functions. This report assumes that the bulkheads along the Cedar River at this site will remain in conjunction with future development.

Requirements for the Standard Stream Study provided in this report are described in RMC 4-8-120D.19. There are three basic requirements: (1) a Site Map, (2) a Grading Plan and (3) a Stream Assessment Narrative. The fulfillment of these requirements is summarized as follows:

1. Site Map – The Site Map required under RMC 4-8-120D.19 for a standard stream report as part of a development application is appended hereto. The Site Map helps explain the layout of the Old Stoneway Site and the site's shoreline functions and values. The ordinary high water mark (OHWM) along the subject site's Cedar River frontage was flagged in the field on April 2, 2008 by Carl Hadley, a qualified biologist with Cedarock Consultants, Inc., who served as a subconsultant to A.C. Kindig & Co. concerning this study. The locations of the OHWM flags set by Carl Hadley were field surveyed the following week by Triad Associates and are shown on the attached Site Map. Andrew Kindig, PhD, a biologist with A.C. Kindig & Co., performed reconnaissance of the site with Carl Hadley on April 2, 2008, and revisited the site on August 18, 2009. The current remediation activities on the site have neither affected the location of the ordinary high water mark along the site nor the shoreline functional assessment originally conducted in the field during April 2008.
2. Grading Plan – This requirement is not applicable to this Stream Study, which is to assess the site's shoreline ecological functions and values and which is not part of an application for a development proposal.
3. Stream Assessment Narrative – The Stream Assessment Narrative is provided below.

2.0 STREAM ASSESSMENT NARRATIVE

2.1 Stream Classification

The Cedar River adjacent to the site is classified by the City of Renton as an Urban Shoreline Environment (Class 1). (See RMC 4-3-090G.)

2.2 Site Vegetation

Until recently, the Old Stoneway Site contained a concrete batch plant and associated buildings, infrastructure, and water re-use ponds. Most of the site was surfaced with concrete pavement and compacted gravel. Recent demolition has eliminated all structures with the exception of the water re-use ponds and the existing concrete bulkhead (see below), and replaced most or all of the pavement with packed gravel and/or crushed concrete. Site remediation is currently still in process.

An existing concrete bulkhead located along the eastern 79 percent of the site's riverfront separates the site's unvegetated, relatively flat upland area (where most of the work on the site was historically conducted) from the riverine environment. The bulkhead, which is about 1,170 feet long and ranges between about 3-feet and 12-feet high, extends from the site's southeast property corner to within about 310 feet of the site's southwest corner. A six-foot high chain link fence runs along the bulkhead.

Along approximately the west 310 feet (21 percent) of the site's Cedar River frontage where the bulkhead is absent, a six-foot high chain-link fence separates the unvegetated, relatively flat upper portion of the site from a vegetated, sloping riparian area. Concrete and rip-rap has been used on the lower river bank in some locations within this riparian area to help prevent slope erosion.

The main part of the Old Stoneway site (i.e., the part lying north of the bulkhead and fence) contains virtually no vegetation. (A small area of vegetation is located just upland of the bulkhead at the site's southeastern corner—see Figure 1 and the Site Map.) A narrow strip of riparian vegetation is found in segments along portions of the site's Cedar River frontage. Nearly all of that vegetated strip of land is located between the bulkhead and the river to the south of the bulkhead, and in a wider but still narrow strip of land between the six-foot high chain-link fence and the river west of the bulkhead (see the Site Map in the Appendix). Along some portions of the site's river frontage, the bulkhead extends below the OHWM and, along those portions, there is no vegetation between the bulkhead and river.

The vegetated riparian strip ranges in width from zero feet to about 50 feet, with the widest portion located near the site's southwest corner. (See Figure 1.) Plants within the strip consist of a mix of native deciduous trees and assorted native and non-native shrubs. (See Figure 2.) Young to relatively mature red alder, black cottonwood, and willow dominate the strip's sparse tree canopy. Himalayan blackberry, salmonberry,

Japanese knotweed, and Scotch broom dominate the strip's shrub layer. Various native and exotic grasses inhabit portions of the Cedar River's sand and gravel shoreline.

In addition to the above-described vegetated strip, as noted above a small vegetated area is located upland of the bulkhead at the site's southeast corner. This area is located in a depression behind the bulkhead. (The bulkhead rises approximately 12 feet above the river at this location.) The bulkhead completely separates the vegetated depression from the river. Young alder and Himalayan blackberry grow in this depression, which appears to infiltrate.



Figure 1. Aerial photo showing (a) a lack of vegetation on the main upland portion of the Old Stoneway Site (outlined in red) between the Cedar River to the south and SR-169 to the northeast, and (b) a thin strip of riparian vegetation along the site's southern Cedar River frontage (2007 photo). (Please see the attached Site Map for details.)

Inspection of the site by a certified wetland biologist (James Kelley, Ph.D. of A.C. Kindig & Co.) confirmed that no wetlands exist on or immediately adjacent to the Old Stoneway Site. (See the May 22, 2008 memorandum from Dr. Kelley in the Appendix.)

2.3 Riparian Ecological Functions

Ecological functions for the existing riparian and shoreline area are described below along with a description of existing conditions relative to each function. Upland of the fence and bulkhead along the southern edge of the historic industrial site, no stream ecological functions are present except for infiltration of some stormwater, which may attenuate delivery of a small amount of rainfall to the river. The small vegetated area upland of the highest part of the bulkhead at the site's southeast corner is too separated from the river to contribute any ecological functions.

In view of the Old Stoneway Site's conditions, the discussion below concerning specific types of riparian ecological functions is limited to the small portions of the site where (a) vegetation occurs between the bulkhead and the river and (b) the vegetated riparian area that lies along approximately the west 310 feet of the site's Cedar River frontage.



Figure 2. Cedar River and riparian area along the Old Stoneway Site's southern boundary, which is along the right edge of the river in this photo. This photo was taken on April 2, 2008 looking downstream (west).

2.3.1 Water Quality

Vegetation adjacent to streams and lakes generally tends to help preserve water quality by filtering pollutants, removing nutrients, and preventing sediment introduction. On sites where natural routing of stormwater through vegetated riparian zones is preserved and relied upon for water quality protection, native planted areas with a depth of approximately 100 feet are normally needed in order to preserve riparian water quality function. However, in urban settings, where stormwater runoff is typically not reliant on riparian conditions for treatment before discharge, source control and water quality best management practices are generally used.

At the Old Stoneway Site, the existing on-site riparian zone provides little if any water quality treatment. The entire site appears to either infiltrate and/or surface drain to four existing water reuse ponds that had been located near the top of the bulkhead along the central portion of the site's south edge. Although those ponds appear to have no outlet, they show no evidence of overtopping and, presumably, storm water runoff that drained into them infiltrates and evaporates. Current remediation work in this area makes drainage upon completion of remediation unclear, but the expectation is that infiltration and evaporation will handle most of the runoff from the site; some sheetflow in the future is possible. Along most of the site's river frontage, the narrow riparian zone is isolated from the upland area by the bulkheads. Some surface water may on occasion drain to the southwest corner of the site and spill through the riparian zone but there is no indication that surface flow through this area has been a common occurrence. Should surface water runoff from the site get to the streamside vegetated zone along the western part of the site's south edge, the steep 50-foot-wide slope dominated by Himalayan blackberry has little potential for meaningful water quality treatment function.

2.3.2 Organic Material

Vegetation overhanging a stream can contribute leaves, vegetative litter, and small woody debris directly to stream channels. This material serves as a source of food for aquatic invertebrates, which are in turn eaten by fish. Terrestrial insects, another food source, also utilize riparian vegetation as habitat. The majority of such organic material deposited in a stream comes from directly over the stream. Function diminishes rapidly after about 25 feet from channel's edge although some benefit is still realized up to about 50 feet away.

Vegetation overhanging the Cedar River from the Old Stoneway Site's south edge provides only a very small amount of organic material to the watercourse. The organic material that does fall into the river is carried downstream and deposited in Lake Washington, where it provides some small benefit to aquatic species located there as well. The volume of leaf litter is minor, as is the contribution of woody debris. Because many of the plant species along the Old Stoneway Site's shoreline are non-native and because the site's overall shoreline area lacks vegetative diversity and depth, the nutrient contribution from the vegetation along the Old Stoneway Site's shoreline and

the value of that vegetation as insect habitat is poor. Overall, the contribution of food and nutrients from the existing riparian vegetation along the Old Stoneway Site is low.

2.3.3 Microclimate

Riparian vegetation generally tends to protect streams from climate changes caused by widespread development away from the streams, including changes to soil and air temperature, humidity, and wind. There is no direct link between microclimate and the condition of salmonid habitat. However, it has been suggested that microclimate needs protection in order to help maintain desirable assemblages of plants and animal species, including insects, which are beneficial to fish. The minor amount of vegetation adjacent to the Cedar River along the Old Stoneway Site's frontage can provide virtually no microclimate function. The extensive cleared and paved or graveled portion of the site located so close to the river precludes all or nearly all microclimate function.

2.3.4 Temperature & Shade

Overhanging vegetation generally shades streams, except along reaches of streams where the channel is so broad that most of the water surface is exposed to the sun. By intercepting solar radiation, overhanging vegetation generally inhibits some heat energy from reaching streams, tending to maintain cooler water temperatures. Vegetation also generally shades soil, thereby helping to cool water introduced to streams through the hyporheic zone. Cool water is an essential habitat feature for salmonids, and increases the amount of atmospheric oxygen that will dissolve into the water, which also improves salmon habitat conditions and is essential for salmon spawning.

Under existing conditions, only a very small portion of the Old Stoneway Site has large trees overhanging the river (Figure 1). Along the bulkheaded stretch of the site's river frontage, no significant tree growth exists. Because the site lies on the northern side of the river, the lack of vegetation is not as important as a lack of vegetation would be if it existed along the southern side.¹ (Vegetation along the northern side casts a smaller shadow over the river than does vegetation on the southern side.) With the sparseness of large vegetation, the narrow width of vegetation, and the bulkhead (which prevents stormwater sheet flow introduction to the riparian zone along most if not all of its length), the riparian zone along the south edge of the Old Stoneway Site has little ability to affect stream temperature in the Cedar River.

2.3.5 Human Access Control

One function of protected riparian zones in populated watersheds can be inhibiting the direct encroachment of humans, thereby in turn inhibiting refuse dumping, trampling of vegetation, bank erosion, light and noise. The human access control function is most effective (a) when the adjacent land use consists of low intensity development, (b) when the riparian areas are at least 50 feet wide and planted with a high quality mixed

¹ The southern bank of the Cedar River opposite the Old Stoneway Site is heavily vegetated.

species of native vegetation that discourages entry and (c) where there is a high degree of resident education on the value of the protected riparian zones.

The Old Stoneway Site is zoned COR and the riparian area is designated Urban Shoreline under RMC 4-3-090G. Therefore, urban and water-dependent uses are encouraged by the site's underlying zoning and the City's Shoreline Master Program. Under section 5.07.01A of the July 22, 2009 draft SMP, the riparian area of the site is proposed to be within the High Intensity Overlay on the Cedar River, a shoreline area where intense development is generally encouraged subject to various other draft SMP provisions.

The Old Stoneway Site was historically used for heavy industrial purposes, including a concrete batch plant, stockpiling of rock products, parking of concrete mixers and gravel trucks, outdoor storage of construction equipment and related industrial activities and associated buildings and infrastructure.

Ten tall light standards used for area lighting of the site's industrial yard north of the river are situated along the length of the site a few feet north of the chain link fence that runs along the site's Cedar River frontage.

Because the property immediately adjacent to and west of the Old Stoneway Site is a heavily used city park (the Cedar River Park) with public access to the shoreline zone, a relatively high level of existing human activity is present in the site's vicinity. The vegetated riparian strip along segments of the site's west edge is not currently accessible from the industrially used portion of the site due to the existing bulkhead and fencing. However, the western fifth of the vegetated riparian zone can be accessed along the shoreline from the park property to the west. East of this area, the river's edge is generally up against the bulkhead. The site's narrow riparian zone, located along the portion of the site's river frontage to the west of the bulkhead, has been impacted by human use. Informal trails and homeless encampments cut through the vegetation in that area have impacted vegetative functions.

The property east of and abutting the Old Stoneway Site is a small office park with an office building and parking lot immediately adjacent to a narrow riparian zone dominated by Himalayan blackberry on a short steep slope. Human use here is at a lower level than the park to the west of the Old Stoneway Site, but is occurring closer than 50 feet to the river.

2.3.6 Large Woody Debris

Large woody debris (LWD) consists of downed tree stems and branches and is a functionally important structural component of stream channels in the Pacific Northwest. LWD also acts as a surface for biological activity that contributes to the productivity of a stream system. In a mature coniferous forest, a large portion (70 to 90 percent) of LWD in a stream typically comes from within 50 feet of the stream.

Riparian trees along the Old Stoneway Site's shoreline consist entirely of deciduous tree species like alder and cottonwood. While deciduous trees provide some LWD function, they degrade more quickly than conifers once having fallen into the river and they do not provide the long-term benefits that conifers provide. With very few trees currently along the shoreline and with a total lack of conifers, the Old Stoneway Site's existing riparian area functions poorly as a source of LWD.

2.3.7 Channel Migration Potential

Adjacent to the Old Stoneway Site, the Cedar River channel's north bank is highly confined by the bulkhead and, to the east and west of the site, the river channel's north bank is highly confined by other public and private infrastructure. Channel migration into the riparian or shoreline area is not possible at this location.

2.3.8 Bank Stability

Roots from vegetation growing along a streambank ordinarily help stabilize soils and reduce erosion. Root strength benefits are normally low beyond 40 feet from the stream channel.

Most of the bank along the Old Stoneway Site is armored with bulkhead, concrete, and/or rip-rap. The site's southwest corner is more natural, although rip-rap or concrete occurs in places, and in that southwestern area vegetation has a minor role in protecting the river bank. Overall, vegetation has (a) a minor bank protection function along approximately 80 percent of the site's western and central river frontage, and (b) no bank protection function along the balance of the site's river frontage.

2.3.9 Wildlife Habitat

The narrow, sparsely vegetated strip of land along the Old Stoneway Site's river frontage provides little wildlife habitat. Ordinarily, areas adjacent to major rivers like the Cedar River have good habitat potential. However, habitat potential at the Old Stoneway Site's river frontage is severely constrained by the bulkhead, the narrow or absent band of riparian vegetation, and the relatively poor quality of the vegetation that does exist. The very few large trees provide a little nesting and foraging habitat for various bird species. The armored bank and dense blackberry limit terrestrial wildlife habitat value.

2.4 Fish and Wildlife Use

Observed or reported fish and wildlife that make use of the Cedar River along the Old Stoneway Site include primarily salmonids, other resident and migratory fish, possibly a few mammals, and bird nesting, breeding, and feeding/foraging areas. Salmonid use includes fall Chinook, coho, Dolly Varden/bull trout, sockeye, steelhead, coastal cutthroat and resident trout (Williams et al 1975, WWTIT 1994, WDFW 1998, WDFW 2008). Chinook, steelhead, and bull trout are listed as protected under the Endangered

Species Act. No other protected or sensitive species are found on or near the Old Stoneway Site (WDFW 2008).

2.5 Tree Protection Measures

All trees greater than 10-inches in (breast height) diameter located on and immediately adjacent to the Old Stoneway Site were surveyed and plotted (Triad 2006). All trees of this size are well within any reasonably expected future buffer boundary and are expected to remain.

3.0 REFERENCES

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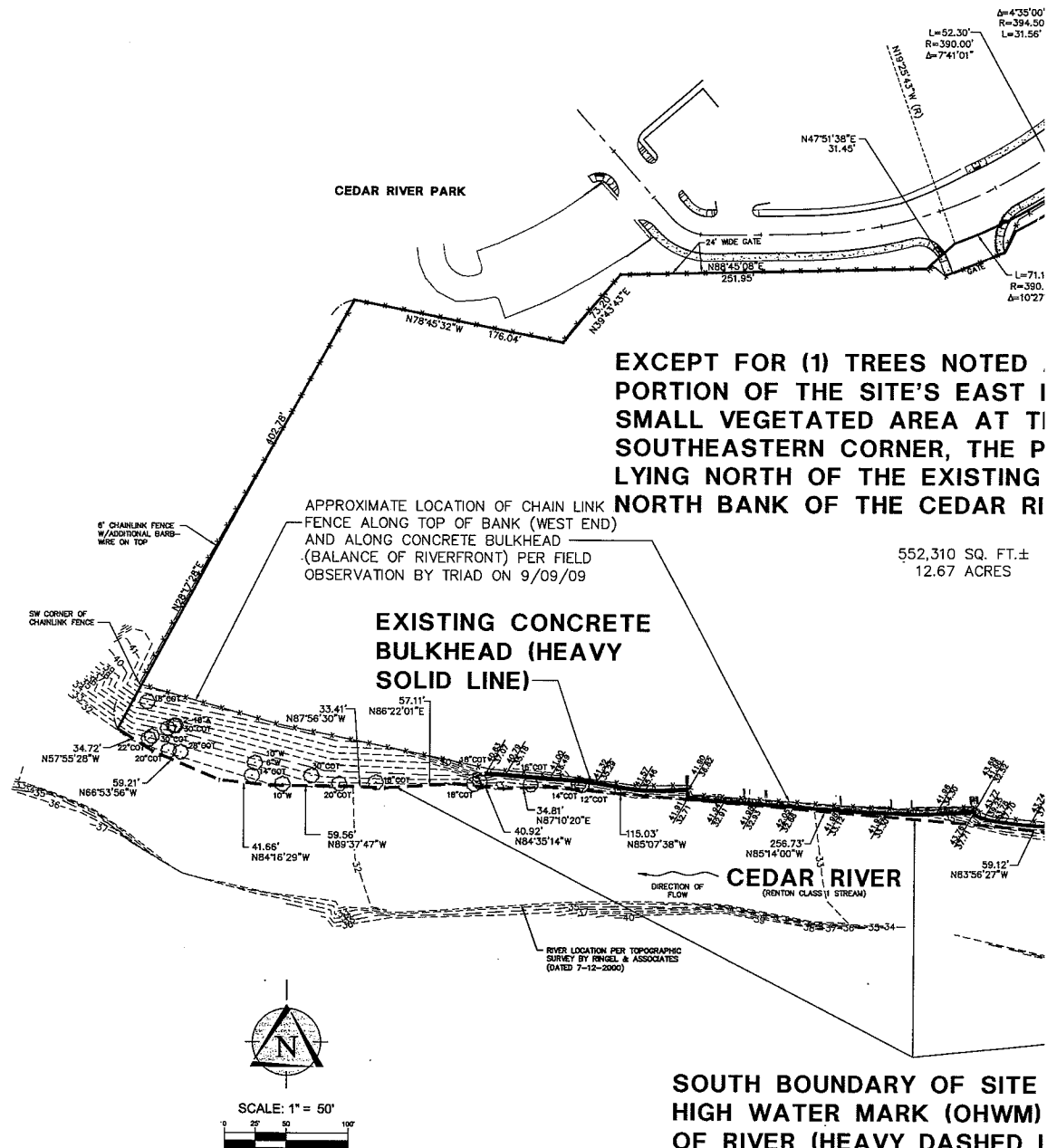
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APPENDIX



NOTES:

1. ELEVATION CONTOURS AND EXISTING CONCRETE BULKHEAD LOCATIONS AND TOP AND TOE OF BULKHEAD ELEVATIONS ARE FROM TOPOGRAPHIC SURVEY BY RINGEL & ASSOCIATES (DATED 7-12-2000) TREES BY TRIAD ASSOCIATES (APRIL 2006) OHWM FLAGS (BY BIOLOGIST CARL HADLEY) LOCATED BY TRIAD ASSOCIATES (APRIL, 2008)
2. OFFSITE (INCLUDING SR169) IMPROVEMENTS ARE NOT ASBUILT AND ARE SHOWN PER DESIGN PROVIDED BY CITY OF RENTON CONSULTANT (PERTEET ENGINEERS) PER ELECTRONIC FILE PROVIDED 04/07/06

A.C. Kindig & Co.

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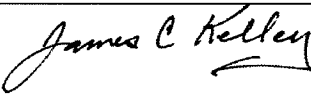
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Memorandum

Date	May 22, 2008	Project Name	Old Stoneway Site Short Plat
To	AnMarCo	Project Number	275
From	 James C. Kelley, Ph.D. Wetland Scientist	Regarding	May 12, 2006 Wetland Assessment Report

On May 12, 2006, I examined for the presence of wetlands both (a) your Old Stoneway parcel, which I understand is now proposed for a two-lot short plat, and (b) the surrounding area. The parcel is located at 1915 SE Maple Valley Highway (SR-169) and is designated as King County Assessor's Tax Parcel No. 1723059026. The parcel has historically been used for heavy industrial purposes, including a concrete batch plant, stockpiling of rock products, parking of concrete mixers and gravel trucks, outdoor storage of construction equipment and related industrial activities and associated buildings and infrastructure. The parcel's south edge borders the Cedar River. An existing approximately 1,170-foot long concrete bulkhead extends generally west along the river from the site's southeast corner to a point located about 310 feet east of the parcel's southwest corner, which is also along the river. A narrow strip of riparian vegetation is found along portions of the parcel's shoreline frontage.

As explained below, I found that (a) there are no wetlands on the Old Stoneway parcel and (b) there are no wetlands on any surrounding parcels that appear to be close enough that regulatory buffers would extend into the parcel.

Vegetation Coverage and Wetland Indicators on the Site

The following five bullet points address the narrow riparian strip immediately along the parcel's Cedar River frontage:

- From the parcel's southwest corner to a point about 310 feet eastward along the parcel's shoreline (a stretch along the shoreline where no bulkhead exists), and for another 165 feet to the east along the shoreline where a bulkhead is present (i.e., along an overall combined stretch of shoreline from the parcel's southwest corner to a point along the bulkhead opposite the westernmost edge of a row of four water reuse ponds located above the bulkhead), a vegetated riparian strip occurs on a steep river bank and has a width of up to about 50 feet.

- From the point along the bulkhead opposite the westernmost end of the water reuse ponds to the eastern edge of the shoreline, riparian vegetation is absent or consists of scattered plants growing in a very narrow upland fringe between the bulkhead and the river.
- Plants in the riparian strip consist of a mix of native deciduous trees and native and non-native shrubs. Scattered big-leaf maple, red alder, black cottonwood, and willow trees are present. The dominant vegetation consists of Himalayan blackberry, salmonberry, and Scotch broom shrubs. Various native and exotic herbaceous species (including Japanese knotweed) occur on and along the river banks and on and along the sand and gravel shoreline.
- The river bank is characterized by (a) upland vegetation and (b) non-hydric fill soils that lack any evidence of a seasonal high water table.
- Because this narrow riparian strip lacks each of the three wetland indicators (wetland vegetation, wetland soils, and wetland hydrology), it is a non-wetland riparian area.

The following four bullet points address the area upland of the bulkhead:

- Nearly all of the approximately 12.53-acre parcel is paved or graveled and is thus unvegetated.
- At the parcel's southeast corner, a small patch of alder is located north (upland) of the bulkhead. This area is located in a closed depression that is approximately 10-12 feet above the river surface. The area is dominated by alder saplings and Himalayan blackberry shrubs.
- Soils in the depression largely consist of fine grained crushed concrete. Soils in this area were found to be moist but non-saturated and no evidence of a seasonal high water table was found.
- This area lacks each of the three wetland indicators (wetland vegetation, wetland soils, and wetland hydrology) and is thus non-wetland.

Wetland Indicators Adjacent to the Site

It is unlikely that any wetlands exist on adjacent properties that could have buffers extending onto the subject parcel.

- A developed city park is located to the west-northwest and has no wetland indicators near the subject parcel.
- SR 169 bounds the site to the northeast.
- A small office park is adjacent to the subject parcel site to the east-southeast. It consists of landscaping, a parking lot, a building, and an area down to the river covered with Himalayan blackberry and that appears to be armored. Even if portions of the riverbank

under the Himalayan blackberry lack armoring, the blackberry is unlikely to be growing over wetland vegetation, wetland soils, or wetland hydrology.

- To the southwest, the site is bounded by the Cedar River, which is approximately 60 feet wide at its narrowest section (near the subject parcel's southeast corner) and about 100 feet wide on average along the subject parcel.
- The opposite shoreline is a forested slope which was not walked. However, due to the opposite bank's slope and vegetation character, if wetlands were present it is unlikely their regulatory buffers would extend across the Cedar River.

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Principal Biologist

EDUCATION

*Ph.D., Aquatic Ecology,
University of Washington
M.S., Ecology and
Evolutionary Biology,
University of California
B.A., Biology,
University of California*

PROFESSIONAL ASSOCIATIONS

*American Water Resources
Association*

*Certified Erosion and
Sediment Control Lead*

*Law Seminars International
Conference Faculty (Natural
Resources)*

PROFESSIONAL EXPERIENCE

*A.C. Kindig & Co.
2001-present (Principal)*

*Associated Earth Sciences,
Inc., 1997-2001 (Natural
Resources Division Manager)*

*Beak Consultants
Incorporated, 1987-1997
(Seattle Office Manager 1995-
1997)*

*Nortec Environmental
Consultants, 1985-1986*

SUMMARY

Dr. Kindig has professional expertise in aquatic resource management, environmental data analyses, water quality, regulatory requirements, environmental impact analyses and prediction, water rights evaluations, mitigation and enhancement planning, toxicology, and environmental monitoring system design. He has participated in numerous projects involving compilations of best available science reviews for aquatic resource regulations, extensive assessments of water quality, stormwater treatment, National Pollutant Discharge Elimination System application studies, Federal Energy Regulatory Commission licensing, National Environmental Policy Act and Washington State Environmental Policy Act compliance, water rights transfers, and natural resource damage assessments. His experience has given him particular expertise in developing natural resource management strategies, evaluations and impact forecasts, and monitoring and management plans for residential projects, large scale master plan communities and resorts, industrial and commercial projects, and critical areas ordinance updates.

REPRESENTATIVE PROFESSIONAL EXPERIENCE

BEAVERDAM

King County, Washington

Andy Kindig was the lead water quality consultant for this project, a portion of which drains to Beaver Lake. The project was comprised of residences, a golf course and clubhouse, and septic discharge from the clubhouse. A quantitative water quality assessment was prepared for the entitlement phase of the project.

BLAIR-HYLEBOS PENINSULA REDEVELOPMENT PROJECT

Port of Tacoma, Washington

Dr. Kindig evaluated stormwater quality impacts and Low Impact Development (LID) potential for the industrial redevelopment of the Blair-Hylebos peninsula in Tacoma, as part of an EIS analysis for the project.

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PUBLICATIONS

Kindig, A.C. Ecology's CAO & Other Authority: A Primer. March 22, 2005. Law Seminars International Conference: Clean Water and Stormwater: Legislation, Permitting Compliance, Recent Developments. Seattle, WA.

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CITY OF AUBURN WATER SUPPLY

Auburn, Washington

Dr. Kindig was the water quality technical lead, and in conjunction with Cosmopolitan Consulting Engineers, evaluated background conditions, impacts, and mitigation for a proposal to increase production from the City's groundwater wells under its existing water rights.

CASCADIA EMPLOYMENT-BASED PLANNED COMMUNITY

Pierce County, Washington

Dr. Kindig managed the work for this 4,719-acre site, including on-site geology, geohydrology, hydrologic, fisheries, and water quality investigations to support an Environmental Impact Statement (EIS) for a planned community south of Bonney Lake and east of Orting. The site is bound by steep slopes dropping to South Prairie Creek and the Carbon River on three sides. Andy Kindig has contributed conceptual planning and evaluation of storm water quality treatment infiltration facilities and effects of potential phased on-site sewage infiltration options on ground water quality for the project, with particular attention to Canyonfalls Creek, which is completely supported by recharge from a shallow aquifer under the site and from which third parties have water rights.

CITY OF BELLEVUE CRITICAL AREAS ORDINANCE REVIEW AND BEST AVAILABLE SCIENCE RECOMMENDATIONS

Bellevue, Washington

Dr. Kindig was asked by the Bellevue Chamber of Commerce to assist them in working with the Mayor, City Staff, and the City Assistant Prosecuting Attorney to recommend improvements to incentive-based provisions for habitat restoration in the City's new Critical Areas ordinance. Many of the draft ideas and example text that Dr. Kindig developed during discussions with interested groups and the city were incorporated in the City's revised Critical Areas Ordinance.

CITY OF RENTON CRITICAL AREAS ORDINANCE LITERATURE REVIEW AND RECOMMENDATIONS

Renton, Washington

Dr. Kindig was asked by the City of Renton to create a workshop on shoreline buffers, concentrating on explaining the various regional, county, state, and federal responses to the listing of chinook salmon and bull trout under the Endangered Species Act, functional attributes of buffers, the basis for many proposed "no touch zones," and a review of the

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WA.

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supporting literature for shoreline buffer functions and their relationships to critical fish habitat requirements. Dr. Kindig prepared a best available science literature review and recommendations for regulations of streams, wetlands, and lakeshore to be used for the city's revised critical areas ordinance; Dr. Kelley with A.C. Kindig reviewed wetlands CAO portions.

CITY OF MOUNT VERNON CRITICAL AREAS ORDINANCE REVIEW AND RECOMMENDATIONS

Mount Vernon, Washington

Dr. Kindig was asked by the Washington Association of Realtors and the City of Mount Vernon to participate in a workshop reviewing alternative standard CAO provisions and a restoration incentive alternative. Dr. Kindig provided analysis and input to the workshop, and is continuing in concert with the Master Builders Association to provide input to the City's evaluation of the incentive alternative for its revised Critical Areas Ordinance.

CRANBERRY LAKE MONITORING – ROCK RIDGE RESIDENTIAL DEVELOPMENT

Anacortes, Washington

Dr. Kindig developed a multi-year monitoring plan for the City of Anacortes' approval, and the firm is currently implementing annual monitoring of Cranberry Lake's trophic status. Cranberry Lake is in a natural woods preserve within the city, which requested monitoring and contingency planning to ensure the Rock Ridge residential development would not accelerate lake eutrophication.

EAST LAKE SAMMAMISH RETAIL CENTER

King County, Washington

Responsible for storm water quality and infiltration management for a commercial development on the site of a prior gravel pit in the Lake Sammamish drainage basin and future annexation area for the City of Issaquah. Provided input to water quality management which included: evaluation of ground water influences from construction to protect the interests of two water districts drawing from the aquifer beneath the site; explained and reached an agreement with Issaquah and county staff on water quality management; coordinated incorporation of best management practices for cement kiln dust as a soil additive into National Pollutant Discharge Elimination System (NPDES) permits for the project and County approval; and provided oversight to construction monitoring under

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the Department of Natural Resources reclamation and individual commercial NPDES permits.

GREENBRIDGE

King County, Washington

Prepared a technical memorandum and responses to comment on the Draft Environmental Impact Statement for the Greenbridge King County Housing Authority's proposed project, with regard to the impacts of phosphorus in stormwater from project redevelopment on Garrett Lake.

LAKEPOINTE MIXED USE PROJECT

King County, Washington

Responsible for water quality, wetlands and shorelines analysis, planning, permitting, and enhancements as part of a proposed urban development in Kenmore at the north end of Lake Washington. Work was completed through the EIS phase of the project, and included stormwater treatment to prevent adverse impacts to Lake Washington water quality. If constructed, Lakepointe would be one of the first model developments under the North Shore Community Plan developed in response to the Growth Management Act. The project would be a high density residential, retail, commercial, and entertainment land use replacing industrial use on land bounded by Lake Washington and the Sammamish River. The project would also include significant riparian and lakeshore habitat enhancements.

MASTER BUILDERS ASSOCIATION REVIEW OF SNOHOMISH COUNTY CRITICAL AREAS REGULATIONS UPDATE

Snohomish County, Washington

Responsible for reviewing and preparing technical comments to assist Master Builders' with comment on Snohomish County's Best Available Science Review and draft Critical Areas Regulations. Prepared a technical report that recommended improvements in the linkage of Best Available Science to various wetland and stream critical areas regulations, as well as other improvements to the regulations.

NORRIS ESTATES

Sammamish, Washington

Andy Kindig was responsible for water quality analysis during SEPA evaluation of the project, which included assessment of the stormwater system discharging in part to Beaver Lake which has an 80% phosphorus

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removal goal for new stormwater, and an assessment of cumulative impacts of development on Beaver Lake at the time.

REDMOND RIDGE AND REDMOND RIDGE EAST DEVELOPMENTS

King County, Washington

Prepared a technical analysis of stormwater quality management for a 1,046-acre Redmond Ridge Urban Planned Development, consisting of 1,300 dwelling units, 8 acres of retail, and 122 acres of business park. Analyses of surface water, ground water, and cumulative regional impacts to off-site Welcome Lake were used in both Environmental Impact Statement and Master Drainage Plan submittals. Dr. Kindig provided expert testimony during hearings as to the impacts of the proposed project's stormwater infiltration on the City of Redmond's water supply. Dr. Kindig also managed water quality aspects of the Redmond Ridge East urban and Redmond Ridge Panhandle rural proposals DEIS assessment, including preparation of a soccer field turf management plan, all monitoring and water quality data assessments, and cumulative impact assessments on regional aquatic resources from the combined developments.

SAFEWAY AUBURN DISTRIBUTION CENTER

Auburn, Washington

Dr. Kindig prepared a water quality report evaluating demolition of a portion of a Boeing fabrication plant and redevelopment as a warehouse distribution center for Safeway Inc. as part of a SEPA Checklist submittal. The site is adjacent to groundwater wells drawing the City of Pacific's water supply, which required specific evaluation and mitigation. Dr. Kindig is currently responsible for stormwater discharge permits and water-quality through construction.

SEAHAWKS HEADQUARTERS

Renton, Washington

Provided Critical Areas Report coordination, wetland buffer alteration advisement, stormwater quality treatment and management advisement, a turf integrated pest management plan, and riparian/shoreline functional restoration advisement for the project.

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SNOHOMISH REGIONAL WATER AUTHORITY

Everett, Washington

Dr. Kindig was responsible for evaluating water quality and for developing a mitigation and management strategy to prevent adverse impacts from transfer of a water right in the lower Snohomish River used for industrial purposes by Weyerhaeuser to a domestic regional water supply use by the Snohomish Regional Water Authority. Dr. Kindig assisted with SEPA documentation for the project, negotiated and prepared a monitoring and management plan to prevent adverse water quality impacts from a change in the seasonal pattern of use that the water right transfer would cause, and testified on the Applicant's and Ecology's behalf during appeal hearings before the Water Pollution Control Board on the adequacy and sufficiency of Ecology's Record of Examination in granting the water right transfer. The appeal was denied by the board and the water right transfer was granted.

SNOQUALMIE RIDGE and SNOQUALMIE RIDGE II MASTER PLAN PROJECTS

Snoqualmie, Washington

Dr. Kindig is responsible for baseline stormwater, fisheries, and surface water quality monitoring, prediction of developed water quality condition, and mitigation planning at the greater than 2,000-acre Snoqualmie Ridge and Snoqualmie Ridge II sites. Monitoring studies through construction and post-development stages of each of the 30-year project development phases are tailored to specific land use proposals in each of the drainage basins, as well as to specific storm runoff treatment and infiltration facilities. Responsible for analysis of Snoqualmie River water quality in response to projected wastewater discharge from the City of Snoqualmie using a calibrated and verified QUAL-2E water quality model, and analyzed stormwater runoff facilities and discharge impacts for the proposed golf course, access parkway, residential, and mixed use development. Developed a golf course maintenance plan for the proposed PGA-tournament course. Evaluated Low Impact Development strategies and prepared a Low Impact Development (LID) assessment for the Snoqualmie Ridge II Master Plan.

SUNCADIA RESORT & WATER RIGHTS

Kittitas County, Washington

Dr. Kindig has evaluated existing surface and groundwater quality conditions, developed impact analyses for stormwater infiltration, and

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provided mitigation planning for a 7,400-acre forested site planned as a resort in eastern Washington. The site is bisected by the Cle Elum River, just above its convergence with the Yakima River. The project includes three golf courses. Dr. Kindig prepared a golf course grow-in phase management plan for those courses in consultation with the project design engineers, planners, and golf course managers. Dr. Kindig assisted the client as technical scientific lead coordinator for water rights transfers granted by the Department of Ecology. Dr. Kindig is currently assisting with additional water rights transfers for the project, annual reporting and coordination of Suncadia's water usage to Ecology and the US Bureau of Reclamation per the Monitoring and Management Plan he prepared, which was required through Ecology's Modification Letter to the Kittitas County Water Conservancy Board's decision on Suncadia's Yakima River water rights. Dr. Kindig is assisting the client with methods to equalize supply and demand to avoid adverse impact to Total Water Supply Available (TWSA) on the Yakima River.

TALUS

Issaquah, Washington

As a subconsultant to Montgomery Water Group, Dr. Kindig prepared a water quality analysis for the master planned community above Tibbits Creek in the Issaquah Creek and Lake Sammamish drainage basin in support of the Master Drainage Plan. Estimated undeveloped phosphorus loadings to Lake Sammamish and forecast mitigated loadings after development. Worked with City staff to recommend construction-phase management of sediment and related phosphorus, and developed and implemented a monitoring strategy to provide adaptive management input through construction.

TROSSACHS

Sammamish, Washington

Dr. Kindig prepared several water quality assessments for various phases of Trossachs evaluating protection of Beaver Lake and bog wetlands in the vicinity of the project. These included evaluations of monitoring results for wetland ELS-21 and studies of sand filter and wet pond methodologies for meeting the combined goals of bog protection and Beaver Lake phosphorus protection.

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TUKWILA SOUTH PROJECT

Tukwila, Washington

Dr. Kindig is the lead aquatic resource consultant for this master planned campus-research project proposed in Tukwila. A water quality technical report was prepared for the project EIS, and A. C. Kindig & Co. is the principal contributor to the Sensitive Areas Master Plan, Wetland Mitigation Plan, and 401/404 permits for this 500-acre property adjacent to the Green River. The 401 Certification was obtained in November, 2005, and included a maximum expected concentration analysis for metals in stormwater and Low Impact Development (LID) strategies developed by Dr. Kindig for the project.

THE VILLAGES AT BLACK DIAMOND

Black Diamond, Washington

Dr. Kindig is responsible for modeling future water quality, monitoring of existing water quality, and assisting development of a stormwater management plan protective of aquatic resources during SEPA evaluations that will be prepared for a master plan for growth within the Black Diamond UGA proposed by Yarrow Bay Development. The work includes advisement on protection of lakes, bogs and wetlands, streams, and groundwater as a result of stormwater discharges and infiltration.

WASHINGTON ASSOCIATION OF REALTORS COMMENT ON PIERCE COUNTY SHORELINES MASTER PROGRAM

Pierce County, Washington

Responsible for technical review of the Pierce County's Executive branch's proposal to Council in response to the Central Puget Sound Growth Management Hearings Board decision of July 12, 2005, with regard to regulating critical salmon habitat within the County's Critical Areas Ordinance ("CAO"). Provided analysis and recommended improvements to the response to assist the REALTORS' discussions with Pierce County staff.

WEST KITSAP JOINT PLANNING AREA

Kitsap County, Washington

Responsible for evaluating existing surface and ground water quality and for recommended stormwater management and infiltration strategies for a mixed use/business park area within the potential urban growth expansion area for the City of Bremerton. The work was done for the property owner, Port Blakely Tree Farms, under an advisory capacity to a

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committee of city and county agencies and the Suquamish Tribe. The property drains via ground water to Dickerson Creek, a valuable fisheries resource, and to Kitsap Lake which has considerable recreational use by the city and county residents.

WHATCOM REDEVELOPMENT PROJECT

Port of Bellingham, Washington

Dr. Kindig evaluated stormwater quality management and Low Impact Development (LID) potential for mixed-use redevelopment of the Bellingham waterfront, in support of an EIS for the redevelopment project.

CEDAROCK CONSULTANTS, INC.

Environmental Consulting

CARL G. HADLEY Principal Fisheries Biologist

EDUCATION

*B.A., Ecology
University of California
at San Diego*

*M.S. Graduate Studies, Fisheries
University of California
at Davis*

PROFESSIONAL REGISTRATIONS

*Washington Department of Natural
Resources
Watershed Analysis
Analyst/Specialist
Fisheries, Channel and Water
Quality Modules*

*Instream Flow Physical Habitat
Simulation (PHABSIM) Modeling
Course*

NAUI and PADI, Open Water Scuba

PROFESSIONAL ASSOCIATIONS

American Fisheries Society

*American Fisheries Society -
Bioengineering Group*

SUMMARY

Mr. Hadley provides over 19 years of experience in assessing and mitigating development project impacts on aquatic habitat. Mr. Hadley has been the principal fisheries scientist on dozens of Environmental Impact Studies under SEPA/NEPA. Much of Mr. Hadley's current practice specializes in working with clients with exposure to fisheries resources impacted by the Federal and State threatened and endangered species programs. Past experience has included field analysis and authorship of fisheries modules for over a dozen Washington State DNR level 2 watershed analyses, a half dozen Habitat Conservation Plans for incidental take permits under Section 10 of the federal Endangered Species Act (ESA), and scores of Biological Evaluations and Biological Assessments for consultation under Section 7 of the ESA. Mr. Hadley has also provided design, permitting, and construction oversight on several dozen urban and rural stream enhancement and restoration programs.

REPRESENTATIVE PROFESSIONAL EXPERIENCE

SNOQUALMIE RIDGE PROJECT Weyerhaeuser Real Estate Company Snoqualmie, Washington

Prepared fisheries sections for the Master Drainage Plan and multiple EISs. Assessed salmonid fisheries habitat in 21 drainage basins on the 2,000-acre development site. Evaluated project impacts on each stream and provided design input for fisheries mitigation. Conducted long-term monitoring studies to evaluate construction and land-use change impacts and develop appropriate responses based on adaptive management concepts.

REDMOND RIDGE DEVELOPMENT Quadrant Corporation Redmond, Washington

Evaluated existing conditions and developed aquatic habitat protection measures for this 460-acre land development in western Washington. Authored fisheries sections of EIS. Worked with County staff to identify fish-bearing stream reaches based on site-specific protocol.

CRITICAL AREAS ORDINANCE DEVELOPMENT City of Renton

Hired by the City of Renton to provide fisheries biology expertise to the City during development of their new Critical Areas Ordinance and Shoreline Master Program regulations. Developed best management practices for stream, lake and riparian habitat based on Best Available Science review. Worked with Department of Ecology and City to ensure new regulations met Growth Management Act (GMA) requirements.

SUNCADIA RESORT Cle Elum, Washington

Authored aquatic affected environment and impacts sections for this 5,000 acre residential and resort development. Developed conceptual mitigation options for potential effects to resident and anadromous salmonids. Worked with WDFW, WDOE, NMFS, USFWS, and local Tribes to establish fisheries protection measures for new bridges, water intakes, stream crossings, plats, and golf courses. Testified before Kittitas County Commissioners during public hearings.

SEAHAWKS HEADQUARTERS PROJECT

Renton, Washington

Provided Critical Areas Report for work along Lake Washington shoreline and Gypsy Subbasin Drainage relocation. Prepared Biological Evaluations, JARPA applications, and Streams and Lakes Reports for the headquarters building, dock replacement, boathouse refurbishment, and floating safety barrier projects.

WATERCOURSE MANAGEMENT PROJECTS

Skagit County Department of Public Works, Washington

Provided permitting and mitigation design assistance in support of various projects designed to alleviate flooding and enhance fisheries use of farm-related watercourses in Skagit Valley. Designed stream habitat restoration features, fish passage structures, and riparian planting schemes. Prepared permit applications and supporting documents (JARPAs, Biological Assessments, etc.) as needed for local, state, and federal permits.

WASHINGTON HYDROELECTRIC PROJECTS

Nooksack, Skagit and Snoqualmie River Basins, Washington

Prepared fisheries sections for 15 Federal Energy Regulatory Commission (FERC) license application Exhibit E documents. Coordinated site reconnaissance, anadromous and resident fish population studies, anadromous fish spawn surveys, IFIM data gathering and PHABSIM modeling studies, instream habitat analyses and long-term monitoring studies.

HONDA MARINE CENTER

Lake Union, Washington

Designed and permitted new and replacement dock facilities for a major marine retrofit and maintenance facility on Lake Union. Major fisheries issues included minimizing and mitigating effects of new in-water docks, vertical structure, and upland uses on Chinook, steelhead, and bull trout habitat.

CLEARVIEW WATER SUPPLY PROJECT - BIOLOGICAL ASSESSMENT

Snohomish County, Washington

Prepared a biological assessment for bull trout and Chinook salmon in support of a 8.2-mile water supply pipeline near the town of Snohomish, Washington. The pipeline route crossed numerous fish-bearing streams including the Snohomish River, a major salmon bearing water course. Potential impacts to bull trout and Chinook salmon were addressed.

TREEMONT RESIDENTIAL DEVELOPMENT

Issaquah, Washington

Prepared fisheries sections for Environmental Impact Statement. Developed and implemented fisheries study plan to support a King County EIS and Master Development Plan. Assessed impacts to fisheries and developed appropriate mitigation for all streams.

PALMER-MONROE SAND AND GRAVEL MINE

Snohomish County, Washington

Completed fisheries analysis of existing conditions and potential impacts of proposed gravel quarry in the Snohomish River floodplain. A fisheries restoration plan was developed for the conversion of an agricultural ditch into a stream section as mitigation for the removal of another ditch during gravel excavation.

FRED MEYER STORES STREAM DESIGN

Ellensburg, Washington

Provided fisheries support during the permitting and construction phases of a stream restoration project in Ellensburg. Designed 800 feet of new stream channel to replace an existing fish-bearing ditch. Prepared a BA for bull trout and steelhead trout to fulfill federal Endangered Species Act (ESA) requirements.



September 14, 2009

Erika Conkling, Planner
Renton Planning Division
1055 S. Grady Way
Renton, WA 98057

Sent by email to: shoreline@ci.renton.wa.us

Re: Renton Shoreline Master Program Update

Dear Ms. Conkling:

Thank you for the opportunity to comment on the proposed Renton Shoreline Master Program update. Our mission at Futurewise is to promote healthy communities and cities while protecting working farms, working forests, and shorelines for this and future generations. We have members in the City of Renton as we do throughout Washington State.

The Renton SMP is important because it encompasses the south tip of Lake Washington and the lower reach of the Cedar River.

The draft Shoreline Master Program (SMP) has many good elements. Some of the key provisions, which we strongly support, are:

- The excellent science-based buffers used to protect intact shoreline areas, wetlands, and streams. Buffers are very important for providing fish and wildlife habitat, bank stabilization, filtering and treating surface water runoff, and cleaning groundwater passing through them, among other functions.
- The establishment of a comprehensive enhancement strategy for native vegetation along shorelines where existing development is already within the buffer. Maintaining native vegetation along the lake is needed to maintain terrestrial insects and detritus on lake organisms and fish and which is necessary to maintain the health of the fish populations in lake Washington.¹ Native vegetation also helps to filter pollution out of the runoff that enters the lake. Emergent vegetation along the lake's shoreline can effectively reduce wave energy and property erosion.² Native vegetation also reduces the number of unwanted geese on the shoreline, reducing their negative impact on properties along the lake.

¹ Tom Kahler, The Watershed Company, and Martin Grassley and David Beauchamp, Washington Cooperative Fish & Wildlife Research Unit, *Final Report: A Summary of the Effects of Bulkheads, Piers, and Other Artificial Structures and Shorezone Development on ESA-listed Salmonids in Lakes* p. 48 (Prepared for the City of Bellevue: 13 July 2000). Accessed on July 22, 2009 at: http://www.ci.bellevue.wa.us/pdf/Utilities/dock_bulkhead.pdf

² *Id.* at p. 49.

- The most intact shorelines are protected with a Natural or Urban Conservancy designation. This will help protect them from adverse impacts.
- Measures to protect Lake Washington as a Shoreline of Statewide Significance in the High Intensity environment.
- The establishment of a comprehensive public access strategy for different shorelines reaches within the city.
- Use of water-dependency strategy for Commercial uses.
- The comprehensive treatment of transportation facilities of different types, including aviation.
- The comprehensive treatment of utility facilities of different types.
- The methods of dealing with transportation and utility facilities for individual projects that can have impacts similar to larger facilities.

However, we do have some significant concerns. Below we provide our recommendations to improve SMP.

General

The Shoreline Management Act (RCW 90.58.020) has 3 policy statement paragraphs. However, these extremely important policy statements are not included in the actual policies and regulations of the draft SMP, and we recommend that they be included. It is very important that these principles be very visible in the SMP to ensure their consideration in implementation of the SMP. One of the most important statements is: “This policy contemplates protecting against adverse effects to the **public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life**, while protecting generally public rights of navigation and corollary rights incidental thereto.”

Protection of the Channel Migration Zone is an important requirement of the SMP Guidelines for riverine shorelines³. However, the draft SMP only addresses channel migration for residential uses in any significant way (at 7.09.01). It appears there are no maps for channel migration zones, even though they are required⁴. Similarly, the CAO only addresses channel migration indirectly. Broader application of protection measures are needed for it – both in terms of uses that are inappropriate for locations in this ecologically sensitive and hazardous area, and in terms of shoreline modifications that can damage its functions.

Protection of Shorelines of Statewide Significance

Renton has a number of Shorelines of Statewide Significance. Such special shorelines are to be protected by additional protection measures⁵ to accomplish the SMA policies in RCW 90.58.020. The draft SMP does so for the High Intensity environment (5.06) along Lake Washington, and does it well. However, such additional protections need to be provided for Shorelines of Statewide Significance in other locations and in other environments. We

³ WAC 173-26-221(2)(c)(iv) & WAC 173-26-221(3), and many references throughout SMP guidelines.

⁴ WAC 173-26-201(3)(C)(vii)

⁵ WAC 173-26-251 and numerous locations throughout SMP Guidelines.

recommend developing a system to extend the protections currently in the draft SMP to all Shorelines of Statewide Significance. An area needing particular attention is the Lake Washington areas that are designated Residential.

Shoreline Maps

The shoreline environment maps are not available. Consequently it is not possible to comment on whether the environments are appropriate. The Shoreline Reach maps appear to be the intended as the basis for the shoreline jurisdiction and environment maps, since they map the 200 feet of land measured from the water. However, they have a problem if they are to be used as shoreline environment maps, because they don't capture the open water areas (especially lake surfaces), floodplains and associated wetlands that may be much wider than area now mapped, yet these areas are also under the City's shoreline jurisdiction. Because of this problem, property that is in such areas do not have a definitive environment designated, and owners looking at the map may be misled to believing that they are outside shoreline jurisdiction. Reviewers such as Futurewise are also unable to accurately understand how different shoreline areas are protected. It is equally important for staff members that are developing the SMP and those implementing it to understand how these areas are addressed, especially where environment boundaries change in these wide areas. While maps are only approximate depictions of conditions on the ground, the current mapping capabilities make the depiction of shoreline jurisdiction relatively easy and accurate. We recommend refining the shoreline maps to more accurately depict shoreline jurisdiction and shoreline environments.

Shoreline Environments

Some environments in the draft SMP incorporate the zoning ordinance as use provisions. We recommend against this. Referencing or not referencing the zoning ordinance does not change its validity, and referencing it makes it part of the SMP, which greatly complicates its review by Ecology and requires their approval of the zoning ordinance.

The regulations for High Intensity – Isolated Lands (5.08.01 B.) – say that development standards in Section 7 don't apply. Section 7 contains all the regulations for different types of uses, such as commercial and industrial uses (including the water-dependency requirements), launch ramps, piers, and docks. This is an inappropriate waiver of important development standards governing specific uses. It needs to be reversed.

Use Provisions

The proposed use provisions are perhaps the most troubling aspect in the draft SMP, which leaves *serious doubts that it complies with the use provision requirements in the SMP Guidelines*. Use provisions use an extremely antiquated system of determining allowed uses. Use provisions are mainly placed in each environment, but also placed in the different development-type subjects (commercial, docks, fill, etc.), and even in the general development standards and other locations. In addition, the use provisions only cover limited types of development, not all of them. And they do not cover the range of possibilities within each development type. It is a system used in many old SMPs that has resulted in degradation for 30 years throughout the state.

The primary downfall of the system is that it doesn't cover all the different land use possibilities, nor does it address land uses with consistency in different environments. In

addition, there are almost no uses that are prohibited. Since use that is not prohibited can be approved (and usually will be) as a conditional use, all the uses not covered in the SMP are allowed by default rather than by careful consideration. Furthermore they will often be subject to fewer regulations than the uses that are addressed by the SMP (which often have detailed development standards), even though they can be much more detrimental to shorelines. The result is a system that cannot protect shorelines from uses that are inappropriate for particular areas, especially those that have inherent impacts unsuitable for shoreline environments. This is particularly a concern for the Urban Conservancy, Aquatic, and Natural environments. The Urban Conservancy is the only environment that actually says something is not allowed or prohibited. But these instances are few and still inadequate to protect shorelines. The Aquatic environment does not even include use limits and development regulations, like the other environments do.

Similarly, the SMP modifications do not have any environment limits for where they are appropriate or not appropriate. Consequently all modifications are allowed everywhere. Again, this is a particular concern for the Urban Conservancy and Natural environments. Neither does the SMP address when more intensive modifications need more careful review through a conditional use permit. An example of this is Stream Alterations. While the Stream Alterations subsection includes several prohibitions, it otherwise allows alterations for any other purpose. Such an approach is inappropriate. The section needs to be limited to water-dependent uses and facilities, such as diversion dams, stream crossings, swimming facilities, etc. Furthermore this concept needs to be applied to all modifications, such that modifications in the water are only for water-dependent uses and facilities.

On a side note, SMP Guidelines have a particular structure that groups shoreline uses together and shoreline modifications together. The draft SMP uses these same groupings, but mixes the different uses and modifications in different groupings. In addition, some uses and modifications listed in the SMP Guidelines are missing from the draft SMP. Thus, for example:

- The modification Piers and docks is found in the shoreline uses group
- The use In-Stream Structures is found in the modifications group
- Boat Launching Ramp is a type of modification, but is placed in the uses group
- The modification Breakwaters, Jetties, Groins, and Weirs is not addressed - it could be placed with shore stabilization or its own subsection.
- Forest Practices is missing
- Agriculture is missing

Please note that we understand that different items may be included in the text regulations for specific uses and modifications. What is missing is how these many different items are dealt with for the different environments.

We recommend:

1. If the different types of development are to be grouped into Uses and Modifications, that the contents of the groups match the SMP Guidelines.
2. The SMP should use a Use and Modification Table, and that the use limits be moved to it. This approach is being used by most jurisdictions thus far. The uses and modification entries would be cross-referenced with the shoreline environments by indicating whether the use or activity is permitted,, requires a conditional use

- permit, or that it is prohibited. Tables allow careful consideration of the different entries, and allow comparisons between entries and across environments to ensure consistent and logical treatment of the different uses, activities, and modifications.
3. If a table is not used, then the different types of development need to have use limits provided for them that carefully consider the range of possibilities within them. In doing so, we recommend using categories rather than trying to call out specific uses and modifications, so that all possibilities will fall within one of the categories. This is best done in the sections for the different types of development rather than being placed in the sections for the different environments.
 4. The concept of intensity needs to be introduced to deal with the point that some types of development may be acceptable in some environments if they are of low intensity. This is particularly needed for the Natural and Urban Conservancy environments, which are specifically intended in the SMP Guidelines⁶ to be reserved for the lower intensity uses. Without such limits, these areas will eventually be degraded so that there is a loss of shoreline functions, which is prohibited by the SMP Guidelines.
 5. Be sure that if a category of uses or modifications is allowed or not addressed (such as Agriculture and Forest Practices), that there are development standards included to cover those uses. Otherwise, you should state that they are prohibited.

The issues we have raised make the draft SMP contrary to the intent of the Shoreline Management Act and the SMP Guidelines, which is to base allowed uses and conditional uses on whether they are suitable for the environment. We strongly recommend you look at the use provision systems developed by other cities. The Thurston Regional Planning Council and Jefferson County have developed systems that you might find useful.

General Standards (Section 6)

Section 6.03 (Use Preference) lists 4 items that are basically restatements of the requirements in the SMP Guidelines for jurisdictions to develop an SMP. These are the things the City is supposed to be doing in the SMP development effort. They are not supposed to be simply restated in the SMP. These statements make nice policies, and we recommend that they be designated as such, but the SMP is supposed to provide the detailed regulations for how these statements are actually done in the different shoreline areas. Most of these items should be implemented in detail in the use provisions for different environments, and would address many of the concerns we raised on that subject, above. Placing them in the General Standards creates conflicts with other provisions.

Critical Areas Ordinance Integration

The Critical Areas Ordinance is adopted into the SMP to protect shorelines. However, the CAO is specifically written to exclude designated lake and river shorelines, which are to be covered by the old SMP (see RMC 4-3-050(B)(1)(j)). This has two contrary consequences of particular concern:

1. The CAO has extensive development standards that protect the smaller lakes and streams outside shoreline jurisdiction, but no equivalent standards are found in the SMP to protect the larger shoreline designated lakes and streams. This is contrary

⁶ WAC 173-26-211(5)(a) and (e)

- to state law requiring critical area protection measures within shoreline jurisdiction to be least as protective as those outside shoreline jurisdiction.
2. By adopting the CAO into the SMP for non-shoreline designated lakes and streams, they will be protected at a higher level than the actual shoreline lakes and streams.

The method of incorporating the CAO needs to be rethought in order for those protection measures to apply to the SMP. We recommend one of the following:

- A. Referencing the appropriate sections or subsections in the CAO into the equivalent sections of the SMP (rather than using a blanket reference), or
- B. Copying the needed standards of the CAO into the SMP.

Even aside from the issue of CAO integration, the CAO as a whole does not provide adequate protection for shorelines. An incredible number of uses and activities (many pages worth; RMC 4-3-050(C)(5-7)) are allowed in both the actual critical areas and their buffer as exempt development. There are specific statements, such as at RMC 4-3-050(C)(5), that activities are exempt from any of the protection measures and review process in the CAO Section of the Renton Municipal Code (text is provided under Wetlands discussion below). Such uses and activities are not exempt from shoreline review under the shoreline exemptions, yet the CAO protection measures will not be used to protect shoreline resources in these cases. Uses and facilities that aren't dependent on being close to the water should not be allowed in critical areas or their buffers. We recommend changes to the CAO buffer and exemption systems such that uses and activities allowed in critical areas and critical areas buffers are limited to water-dependent and water-related uses, unless a reduced buffer is approved

Vegetation Management

We commend you on your thorough strategy for dealing with buffers and vegetation conservation, even in areas that are well developed. The primary accomplishment of the system is that in locations where development already exists within the science-based buffer, any new impacts from new development are offset by enhancement requirements. We support this approach, and emphasize that it is needed to justify not requiring the science-based buffer.

Our first concern relates to the standards Table 6.09. The setbacks/buffers listed in it are for "buildings". There is no definition for building in the document; however, the typical definition is limited to enclosed structures. To correctly apply buffers to protect ecological functions, they need to be applied to structures (which would encompass other built facilities), alterations, activities and use areas. Without this change, buffers will become lawns and recreation areas.

Our second concern has to do with the activities and uses that are allowed within the shoreline buffer, as provided below:

- 6.09.02.D. The following development activities are not subject to buffers and setbacks, provided that they are constructed and maintained in a manner that minimizes adverse impacts on shoreline ecological functions, and provided further that they comply with all the applicable regulations in RMC Chapter 4: ... [Note: a page of items follows.]

Many of the listed uses and modifications will inherently displace existing vegetation and habitat, and establish new impacts in locations so close to the water that the remaining setback/buffer can't protect the shoreline resources. Uses should not be in the buffer unless they are water-dependent or water-related (such as water crossings and providing access to the water). This is part of establishing mitigation sequencing within the SMP. There is no reason for the other items to be in the buffer. We recommend the list be abbreviated to say as much.

During the update effort, there will undoubtedly be much opposition to the use of science-based buffers. To support their continued use in the draft SMP, we provide a number of scientific citations supporting the need for buffers, especially for lakes, and summarize their importance below.

Science Supporting Protection of Buffers and Lake Environments

The Shoreline Management Act, in RCW 90.58.020, requires the protection of lakes, streams, and other shorelines. Indeed, RCW 90.58.020 requires that “[p]ermitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” RCW 90.58.020 also provides that the policy of the Shoreline Management Act “contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.”⁷

The prevention of damage, vegetation, and adequate life requires the protection of vegetation and buffers on streams and lakes. Buffers protect many important functions:

- Providing streambank and lake shore stabilization against erosive waves and stream flows;
- Inhibiting surface erosion from surface runoff and flood flows;
- Filtering sediment from surface runoff and flood flows;
- Removing and transforming nutrients and harmful substances from surface runoff and flood flows;
- Removing and transforming nutrients and harmful substances from groundwater passing through root zones.
- Protecting fish in lakes;
- Providing wildlife food web and habitat functions (feeding, reproducing, resting, etc.) for riparian species, and for upland species that use riparian areas;
- Providing fish with over-water hanging cover from predators;
- Contributing in-water woody debris needed for creation of fish habitat;
- Contributing in-water organic matter to feed fish and other aquatic life.⁸

⁷ Emphasis added.

⁸ See for example Karen Capiella and Tom Schueler, *Crafting a Lake Protection Ordinance* Urban Lake Management, Watershed Protection Techniques 3(4) p. 753 (2001), accessed on September 1, 2009 at: http://www.cwp.org/Resource_Library/Center_Docs/special/lakes/ulm_lakeprotectionord.pdf; K. L. Knutson & V. L. Naef, *Management Recommendations for Washington's Priority Habitats: Riparian* pp. 157 – 63 (Wash. Dept. Fish and Wildlife, Olympia WA: 1997) accessed on September 1, 2009 at: <http://wdfw.wa.gov/hab/ripxsum.htm>

To effectively protect lakes requires 50 to 150 foot wide buffers.⁹ For rivers and streams, the maintenance of large woody debris requires 100 to 150 foot wide buffers.¹⁰ This is needed to maintain the structure of and streams especially pools which are necessary to maintain fish populations.¹¹ This applies to Type 1, 2, and 3, or S and F, streams all of which have fish living in them. Sediment removal requires 100 feet.¹² Wildlife habitat generally requires buffers of 100 to 200 feet wide, with wider buffers needed for some wildlife.¹³ We urge you to adopt stream buffers that will protect these important functions. They are necessary to sustain river and stream health.

Wetland Protections in the CAO

The draft SMP adopts the city's existing wetland buffers and regulations found in the CAO. However, the CAO is incapable of protecting the functions and values of wetlands within shoreline jurisdiction. The CAO includes the following Purpose statement for protecting wetlands. Yet the regulations that are established to support it make a point of waiving protection measures for many wetlands, and even seem to encourage the destruction of wetlands.

- RMC 4-3-050 A.7. Wetlands: The purposes of the wetland regulations are to:
- a. Ensure that activities in or affecting wetlands do not threaten public safety, cause nuisances, or destroy or degrade natural wetland functions and values; and
 - b. Preserve, protect and restore wetlands by regulating development within them and around them; and
 - c. Protect the public from costs associated with repair of downstream properties resulting from erosion and flooding due to the loss of water storage capacity provided by wetlands; and
 - d. Prevent the loss of wetland acreage and functions and strive for a net gain over present conditions.

Wetlands are categorized into 3 categories that are not based on current wetland scientific principles, but rather size and presence of a limited number of features. Category 3 wetlands are likely to be the most common in an urban area where they have been abused, but are still persisting:

RMC 4-3-050 M.1.a.iii. Category 3 wetlands are wetlands which meet one or more of the following criteria:

- (a) Wetlands that are severely disturbed. Severely disturbed wetlands are wetlands which meet the following criteria:
- (1) Are characterized by hydrologic isolation, human-related hydrologic alterations such as diking, ditching, channelization and/or outlet modification; and
 - (2) Have soils alterations such as the presence of fill, soil removal and/or compaction of soils; and
 - (3) May have altered vegetation.

⁹ Karen Cappiella and Tom Schueler, *Crafting a Lake Protection Ordinance* Urban Lake Management, Watershed Protection Techniques 3(4) p. 756 (2001).

¹⁰ K. L. Knutson & V. L. Naef, *Management Recommendations for Washington's Priority Habitats: Riparian* p. 164 (Wash. Dept. Fish and Wildlife, Olympia WA: 1997).

¹¹ *Id.* at p. XI.

¹² *Id.* at p. 164.

¹³ *Id.* at pp. 165 – 67.

- (b) Wetlands that are newly emerging. Newly emerging wetlands are:
 - (1) Wetlands occurring on top of fill materials; and
 - (2) Characterized by emergent vegetation, low plant species richness and used minimally by wildlife. These wetlands are generally found in the areas such as the Green River Valley and Black River Drainage Basin.
- (c) All other wetlands not classified as Category 1 or 2 such as smaller, high quality wetlands.

Category 3 wetlands are given little to no protection. The following text from the CAO allows activities without any requirements to meet the development standards in the CAO Section of the municipal code. They can be eliminated through an exemption as a first option rather than a last option. Category 1-3 wetlands can be “temporarily” disturbed with fill and excavation, again as a first option rather than a last option. And the administrator has the option of declaring Category 3 Wetlands non-regulated and not even subject to compensation.

RMC 4-3-050 A.5. Specific Exemptions – Critical Areas and Buffers: Specific exempt activities are listed in the following table. ... Activities taking place in critical areas and their associated buffers and listed in the following table are exempt from the applicable provisions of this Section, provided a letter of exemption has been issued per subsection C4 of this Section, Letter of Exemption. ...

f. Wetland Disturbance, Modification and Removal

- (i) Any Activity in Small Category 3 Wetlands: Any activity affecting hydrologically isolated Category 3 wetland no greater than two thousand two hundred (2,200) square feet when consistent with all of the following criteria...
- (ii) Temporary Wetland Impacts: Temporary disturbances of a wetland due to construction activities that do not include permanent filling may be permitted; provided, that there are no permanent adverse impacts to the critical area or required buffer, and areas temporarily disturbed are restored at a 1:1 ratio. Category 1 wetlands and Category 2 forested wetlands shall be enhanced at a 2:1 ratio in addition to being restored. For habitat conservation areas, this exemption applies only to Category 1 wetlands.

RMC 4-3-050 M.1.e.ii. Nonregulated Category 3 Wetlands: Based upon an applicant request, the Department Administrator may determine that Category 3 wetlands are not considered regulated wetlands, if the applicant demonstrates the following criteria are met:

- (a) The wetland formed on top of fill legally placed on a property; and
- (b) The wetland hydrology is solely provided by the compaction of the soil and fill material; and
- (c) The U.S. Army Corps of Engineers has determined that they will not take jurisdiction over the wetland.

[Note: Many urban wetlands have had fill placed in them in the past, yet persist – these would be included in (a). Hydrology is not provided by the fill, but rather precipitation in the drainage basin, and many isolated wetlands in western Washington are supported by surface drainage. The Corps typically does not take jurisdiction over isolated wetlands – just those connected to stream systems. However, these wetlands can perform important shoreline functions. Rather than excluding them, they should included an given a level of protection consistent with the functions they perform.]

Lastly, the Shoreline Management Act and Shoreline Master Program Guidelines direct the city to adopt development regulations to protect the functions of wetlands. The draft SMP adopts the city's existing wetland buffers and regulations by referencing RMC 4-3-050 M.6.c. These buffers are far smaller than the buffers indicated by science as necessary to protect wetland functions in shoreline jurisdiction. Category 1 wetlands have a 100 foot buffer, Category 2 wetlands have a 50 foot buffer, and Category 3 wetlands have a 25 foot buffer. These are approximately 1/3 of the size that science indicates as being needed.

After exhaustively reviewing the scientific literature on wetlands, Ecology summarized the results of the study's conclusions for buffer widths:

- Effective buffer widths should be based on the above factors. They generally should range from:
 - 25 to 75 feet (8 to 23 m) for wetlands with minimal habitat functions and low-intensity land uses adjacent to the wetland
 - 75 to 150 feet (15 to 46 m) for wetlands with moderate habitat functions and moderate or high-intensity land uses adjacent to the wetland
 - 150 to 300+ feet (46 to 92+ m) for wetlands with high habitat functions, regardless of the intensity of the land uses adjacent to the wetland¹⁴

[Please note that urban uses almost always fall into the high intensity category.]

More detail on the science behind these buffers recommendations is in *Wetlands in Washington State - Volume 1: A Synthesis of the Science* pp. 5-23 through 5-57. Based on this synthesis, Ecology has prepared recommended wetland buffers.¹⁵

We urge the city to adopt a wetland rating system consistent with Ecology's rating system for Western Washington and buffers consistent with one of Ecology's recommended alternatives in Appendix 8-C: Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System. In our view, these changes are needed to comply with the Shoreline Management Act.

Public Access

The SMP utilizes an excellent approach to providing for public access by incorporating the public access objectives into the development provisions of the SMP. We only have one major

¹⁴ Sheldon, D., T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale, *Wetlands in Washington State - Volume 1: A Synthesis of the Science* p. 5-55 (Washington State Department of Ecology Publication #05-06-006. Olympia, WA: March 2005).

¹⁵ Granger, T., T. Hruby, A. McMillan, D. Peters, J. Rubey, D. Sheldon, S. Stanley, E. Stockdale. April 2005. *Wetlands in Washington State - Volume 2: Guidance for Protecting and Managing Wetlands*. Washington State Department of Ecology. Publication #05-06-008. Olympia, WA. Appendix 8-C: Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System pp. 4 – 8. Available from <http://www.ecy.wa.gov/pubs/0506008.pdf>. More detail on the rationale for these buffers can be found in Appendix 8-E: Rationale for the Guidance on Recommended Widths of Buffers and Other Methods for Protecting Wetlands in *Volume 2*.

concern. Public Access standard 6.06.02(C)(3) requires that all public access have over-water facilities. This is inappropriate. Over-water facilities are not needed for all public access, and will result in significant ecological impacts if applied at the scale contemplated by this standard – especially displacement of aquatic and buffer habitat, which is very difficult to replace. The first option for all development should be avoidance and minimization before allowing impacts with compensation. This provision should be edited to apply only in those instances where over-water facilities are used, which preferably are for water-dependent uses such as marinas, swimming and fish piers, etc.

Boat Launching Ramps

Subsection 7.02 addresses boat-launching ramps. The section implies that it is focused on public launch ramps; however, the definition is broad enough to encompass all launch ramps. Due to the impact of launch ramps on upland areas, the water-land interface, and in-water areas, we recommend that a new regulation be added to state that new launch ramps are prohibited, except for marinas and public launch ramps. The occasional need for dock owners to launch and remove their boats at a public facility or using a boat lift is not a hardship, and greatly reduces facilities in the water. This addition will address the problem of proliferation of such facilities across the lake. Such a clarification will also fit with the current format and language in the proposed regulations, which are more focused on public facilities.

Commercial Uses

The SMP does a good job of implementing the limits of the SMP Guidelines regarding water dependency. However, as noted above, commercial uses are allowed in all environments, including Natural, Aquatic, and Urban Conservancy. Such development is particularly inappropriate for the Natural environment. Use limits need to be added for commercial uses.

Section 7.03.01 (1st B)4.c states: “All non-water-oriented commercial uses are prohibited in shoreline jurisdiction water’s edge unless the use provides significant public benefit ...”. It is inappropriate for non-water dependent uses to be located within the buffer let alone at the water’s edge, and this regulation needs to be changed. If they already exist then they are treated as non-conforming structures. If they are part of a mixed use development, a different regulation applies. This provision will apply for new development and will result in continued degradation of the shoreline. We recommend that it be changed to read: “All non-water-oriented commercial uses, when permitted, shall provide significant public benefit ...” An additional paragraph discussing mixed use development, similar to those for water-oriented uses may be appropriate here, as well.

A quirk of the SMP guidelines is that Community Services, such as government buildings/uses, churches, hospitals, etc. is not described specifically. Since they have many of the same characteristics, we recommend including them with commercial uses, such that the category becomes Commercial and Community Service. This will avoid having a gap in the regulations for that type of use. The change would need to be made in several places in the document. This also ensures they are not left out of the general intent of the SMP Guidelines to limit non-water-oriented commercial and industrial uses.

Industrial Uses

The SMP Guidelines have water dependency requirements for industrial uses that are very similar to those for commercial uses. However, the draft SMP does not seem to include them. Such provisions need to be included. As with commercial uses, industrial uses are allowed in almost all environments, often by default. Such development is particularly inappropriate for the Natural environment. Use limits need to be added for industrial uses.

Residential

Sections 7.09 & 6.03 state that residential uses are “preferred” uses. Please note that the SMA policy statements in RCW 90.58.020 states that preferred uses are those consistent with “control of pollution and prevention of damage to the natural environment” (note that prevention of damage is not the same as mitigation of impacts), or uses that are “unique to or dependent upon use of the state’s shoreline” (water-dependent/related). This does not include Residential uses. The SMA states that “Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures”, public access, and water-dependent uses. Thus, residential uses are not automatically appropriate.

Piers and Docks

Docks and boating facilities have significant adverse effects on Lake Washington and other lakes.¹⁶ The *Final Report: A Summary of the Effects of Bulkheads, Piers, and Other Artificial Structures and Shorezone Development on ESA-listed Salmonids in Lakes* recommends consideration of “of ‘a no new piers’ policy as the best option for protecting fish and fish habitat. Encourage the use of floats or buoys instead.”¹⁷ The report recognizes that this may not be politically possible and recommends as a backup no net increase in overwater coverage. In order to build a new dock, existing docks would have to be slimmed down to compensate for the increased coverage. So docks and piers should have carefully crafted standards to protect Lake Washington from their significant impacts.

The Priorities subsection for docks (and associated Policies) in the draft SMP does not include a policy addressing the proliferation of docks and related facilities. This policy is needed to support the related regulations that are already included. We also recommend that a no net increase in dock area be adopted. If it is not adopted, then the adverse impacts of new and larger docks should be mitigated. We also recommend the following specific changes to the regulations.

We recommend changes to RMC 7.07.02 A, which describes different dock situations. Paragraphs 2 & 3 need to be clarified that joint docks and community docks can be used for multiple “single family residences”, because single family residences are the only non-water-dependent use allowed to have a dock.¹⁸ It also needs to be clarified that docks for more than

¹⁶ Tom Kahler, The Watershed Company, and Martin Grassley and David Beauchamp, Washington Cooperative Fish & Wildlife Research Unit, *Final Report: A Summary of the Effects of Bulkheads, Piers, and Other Artificial Structures and Shorezone Development on ESA-listed Salmonids in Lakes* pp. 47 – 49 (Prepared for the City of Bellevue: 13 July 2000).

¹⁷ *Id.* at p. 51.

¹⁸ WAC 173-26-231(3)(b)

four residences are to be reviewed as Boating Facilities¹⁹ (or the equivalent for the draft SMP). Another paragraph is needed to clarify that a dock for multi-family residential is only allowed if developed as a Boating Facility use (or equivalent), which will have its own use limits and development standards – a very important distinction. This is only implied near the end of the Piers and Docks section, and needs to be stated at the beginning.

We also recommend changes to Section 7.07.03 C, which describes shared moorage. This paragraph allows shared moorage for more than two residences, without limit. As pointed out above, it needs to be clarified that it applies not to any residences, but rather single family residences. Furthermore moorage for more than four residences, is considered to be a Boating Facility use (or equivalent in the draft SMP), and subject to those use limits and development standards. This paragraph should probably be split to deal with dock requirements for shared docks, and another paragraph for marina docks; similar to the separate paragraph for water-dependent use docks.

Section 7.07.06 addresses multi-family docks. It correctly states that multi-family residential use is not a water-dependent use. However it goes ahead and allows docks for them. This can result in a single development possibly having a dock with 100 or more slips. This cannot be allowed, unless the dock is reviewed as a Boating Facility, along with appropriate use limits and development standards, including dry moorage to reduce the size of the dock.

Transportation

The transportation section is very thorough and is a model for other jurisdictions on how to deal with the wide variety of transportation facilities, which can have very different inherent impacts.

Linear Transportation Corridors

Our primary concern is that linear transportation facilities have specific known and common impacts, with known and specific means of using mitigation sequencing to avoid and minimize these impacts. These impacts are not covered in the linear transportation section, and we recommend that standards be added to guide how impacts that are specific to linear transportation facilities are mitigated.

Historically, linear transportation projects have had some of the most destructive impacts on shoreline ecological functions. Linear transportation projects have special characteristics that need to be addressed with detailed regulations to deal with the inherent impacts they have. We recommend using mitigation sequencing to reduce or avoid the impacts by providing details specific to transportation uses.

The Transportation section has a number of good provisions. However additional clarification is needed relating to the mitigation sequencing aspect of avoidance, using language similar to the following: “Facilities should be located out of shoreline jurisdiction unless there is no feasible alternative. When necessary, they should be located as far landward as possible.” While there is a similar standard for Roads, we think it needs to be applied to all linear transportation corridors.

¹⁹ WAC 173-26-241(3)(c)

A regulation is needed that addresses a practice that can do as much damage as an actual project: “To prevent secondary impacts from transportation projects, the disposal location of excess material and waste materials shall be disclosed in submittal materials.”

Additional standards are needed to deal with the peculiarities of linear transportation projects impact on water systems by covering the issues below. It may be that some of these are already included in sections not apparent in our review. We also think these should apply to all linear transportation corridors.

- In floodplains, construct linear transportation corridors at grade or otherwise provide flood water pass-through, especially for flood overflow channels.
- Don’t cut off or isolate hydrologic features
- Minimize the number of bridges, by first requiring the use of alternative access points, sharing existing bridges, and sharing new bridges with adjacent lots whenever possible.
- Span both the OHWM & floodway.

Roads

In Section 7.10.01 several of the design requirements (#5, 6, & 10) are actually policies for directing planning functions of the city and other transportation agencies. They should be considered well in advance of the shoreline permitting stage. If parts of them are desired to be development standards, they should be split as appropriate and rephrased as regulatory requirements. Standard 3 may also be more policy-like. Such changes will clarify what the actual development standards are.

We commend you on your inclusion of facilities for individual developments in this section. These facilities (including bridges and driveways parallel to the shoreline) can have similar impacts as larger ones, though at more localized scale. The cumulative impacts can be just as great. Applying consistent development standards will ensure that transportation impacts from individual developments are not missed. Our recommended changes are as follows:

Railroads, Trails, and Parking

The Railroads, Trails, and Parking subsections also contain several policy statements related to planning of facilities that should be treated as described above.

The Parking subsection does not prohibit parking lots as a primary use, as required by the SMP Guidelines²⁰, it is only vaguely implied.

Glare from parking lot lighting is an important impact on fish and wildlife habitat. A standard needs to be added that minimizes and avoids illumination of the water, setback/buffer areas, wetlands, and other wildlife habitat areas.

Aviation

The treatment of Aviation uses is an excellent example of how to deal with such facilities. It should be a model for other jurisdictions to use. Our only concern is that helicopter landing pads are allowed on water front property. The disturbance from such uses is much greater

²⁰ WAC 173-26-241(3)(k)

than seaplane taxi activity, in duration, prop-wash area, vibration, and noise. The disturbance to upland and aquatic life, not to mention adjacent land owners, make such facilities incompatible and inappropriate in any environment except High-Intensity, and should be prohibited in other environments.

Utilities

The utility section is very thorough and is a model for other jurisdiction on how to deal with the wide variety of utility facilities, which can have very different inherent impacts.

Our primary concern, as with Transportation, is that linear utility corridors have specific known and common impacts, with known and specific means of using mitigation sequencing to avoid and minimize these impacts. These impacts are not covered in the utility sections, and we recommend that standards be added to guide how impacts that are specific to them are mitigated. Again, it may be that some of these are already included in sections not apparent in our review.

- Electrical substations are included; however, the standards should address other major facilities, such as sewer plants, water treatment, etc. Specifically, they should be limited to their water-dependent components or prohibited.
- Avoid underground transmission line failures due to stream bed mobilization. In the CMZ or floodway and near streams, locate 4 feet below the bed or 1/3 of bankfull depth²¹.
- Require lines under water features to be placed in a sleeve to avoid the need for excavation in the event of a failure in the future.
- Use an installation method preference order to reduce impacts of utility crossings. The preferences should be: Clear span, attach to bridge, boring, plowing, trenching.
- For underground utilities in high groundwater areas, prevent french-drain effects from draining/rerouting groundwater patterns that support wetlands and streams. Use native soil plugs or collars that interrupt gravel pipe-bedding spaced at intervals. Prohibit the use of under-drains (perforated drain pipes under the main line).
- Treat roads associated with utilities as roads.
- Return grade to previous or better condition that provides for normal floodwater passage.
- New underground utilities always have excess material. Always require disclosure of excess material disposal locations before approval to prevent secondary damage to the shoreline.

Landfill and Excavation

We recommend adding a standard that landfills and excavation shall not alter the normal flow of floodwater, including obstructions of flood overflow channels or swales.

Shoreline Stabilization

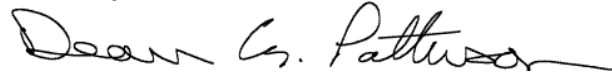
Regulation A in Section 8.04.02 is a general standard and we recommend that it be moved to the General Standards section. The stabilization section will typically only be used when

²¹ Leopold, Wolman, Miller 1964. Fluvial Processes in Geomorphology. General Publishing Company, Ltd. 30 Lesmull Road, Don Mills, Toronto, Canada. ISBN 0-486-68588-8

stabilization is proposed, yet regulation A applies to ALL development, whether or not stabilization is proposed. It is the first step in mitigation sequencing – avoidance.

Thank you for considering our comments. If you require additional information please contact me at dean@futurewise.org or 509-823-5481.

Sincerely,

A handwritten signature in black ink that reads "Dean G. Patterson". The signature is fluid and cursive, with the first name "Dean" and last name "Patterson" clearly legible, and "G." in the middle.

Dean Patterson
Shoreline Planner
Futurewise

September 11, 2009

Erika Conkling, Senior Planner
Shoreline Master Program Update
Renton City Hall Department of Community and Economic Development,
1055 South Grady Way
Renton, WA 98057

Re: Renton Shoreline Master Program Update

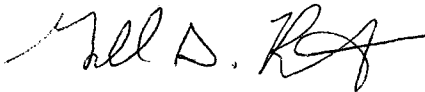
Dear Ms. Conkling,

On behalf of the Boeing Company, we would like to respond in writing to the Draft Shoreline Master Program ("SMP") prepared by the City of Renton.

We would like to thank the City of Renton for reaching out to The Boeing Company early and often throughout this process. Over the past year, we have found the direct dialogue and public meetings on the program helpful and informative. We have reviewed the draft SMP, as well as the accompanying technical memorandums and related materials, and have found the documentation to be well thought out and comprehensive in nature. Given our prior discussions and the input we have provided to date, we have no additional concerns at this time about the SMP. With the explanations you have provided, we are comfortable with the language of the SMP and feel we have obtained a good understanding of how the new SMP regulations and standards will be applied and implemented.

We look forward to reviewing the next version of the SMP, along with the first draft of the restoration and enhancement plan. We also look forward to attending the next planning commission meeting scheduled for October 14, 2009. We believe the City of Renton is heading in the right direction with its update to the SMP and appreciate the hard work and effort you and your department have undertaken on the SMP.

Regards,



Gabe Rosenthal
Counsel – Real Estate
206-662-6562
Gabriel.S.Rosenthal@Boeing.com

Cc: Shaunta Hyde, Government Relations, The Boeing Company



From: Rosenthal, Gabriel S
Sent: Monday, September 14, 2009 9:16 AM
To: Erika Conkling
Subject: RE: ATTACHMENT 1 RE: Renton SMP DRAFT for Planning Commission July29 meeting

Hi Erika,

Here are the few comments we did not discuss in our meeting:

- Section 5.06.2 (2) - Last line should read "...to allow access to persons not living on or near the shoreline...."
- Section 5.07.01 A - High Intensity Designation for Springbrook Creek, etc. The first sentence of subsection A should be revised as follows: "The objective of the High Intensity Overlay on the Cedar River and Springbrook Creek is to provide...."
- Section 5.07.01 C - High Intensity Designation for Springbrook Creek, etc. The first sentence of subsection C should be revised as follows: "The variety of uses allow by the Renton Development Code shall be allowed in the Cedar River and Springbrook Creek High Intensity Overlay area, provided...."

Let me know if you have questions or concerns about these comments or anything else we discussed.

-Gabe

Gabriel S. Rosenthal
Boeing Law Department
Real Estate
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P.O. Box 3707
MC 11-XT
Seattle, WA 98124

Working From the Redline draft of 20090720

3.01 Last sentence is awkward. "of which Renton is an integral part." might be deleted or reworked.

3.02.2.2 Shouldn't that be Potential Annexation Area instead of Future AA?

3.02.?? Extent of Shoreline Jurisdiction .3 (and below in 3.04 Geographical Environments) it appears that features listed are quoted from another (perhaps governing?) source, but "wetlands" are not specified. Should they be?

3.03.7 has a hanging " without a mate.

4.01.01 A. lacks "active voice" that B. and C (and other comparable sections throughout) have. Recommend that they all have comparable phrasing.

4.01.02.A.3 (deleted) This seems a potentially major change in policy. What is the specific reasoning/policy that underlies this proposed change?

What interlocal watershed and adopted Restoration Plans exist and may I have copies?

4.03.02.C.2 Why is there only "should" instead of "shall" for commercial docks and marinas to meet all health standards and contain and clean up spills and discharges of pollutants. I think the stronger language is needed.

4.04.02.E. Final sentence ends confusingly under current edit proposal.

4.04.02.F. Shouldn't it be "commercial and industrial developments" instead of "developers"?

4.06.02.B Is there any transit service to the shoreline areas today?

4.07.02.C. The list of Comp Plan policies is not listed as indicated.

5.01 Suggest this for last sentence in Shoreline Environments/Overlay Districts: "In addition, specific regulations are provided for individual reaches of the water bodies with unique ecological, land use, public service, public access and other opportunities and constraints.

5.02.01.B.6 Should "extractive uses" be allowed within the city? Is this a conflict with XXX?

5.03.01.B.3 Insert "those" before valuable.

5.03.02.B Should these be moved to D. Uses Allowed By Conditional Use Permit? If not, why not?

5.04.02.A.3. "less" should be "fewer". Also at 5.04.03.A.2. And 5.05.03.A.2

5.05.02 What specific standard/document will govern "sustainable development practices"?

5.06.01 Suggest deleting " Urban environment is to".

5.06.2.1 Suggest "Many of which depend..." instead of "may of which depend..."

5.06.2.5 Suggest should include requirement for compatibility of community character or architectural design.

5.08.01.B I can be persuaded that there seems to be little or no aesthetic or habitat concerns, due to current use/circumstances, but water quality concerns remain and indeed may be increased due to current uses. How is this issue addressed?

6.05.01.A.1. What specific standard/document will govern ""reasonable view corridors"?

6.06.02.B.3 What period is intended by "long term"?

6.06.03.A.3 Incomplete statement.

6.07.02.A.2. Appears to give an exemption from the SEPA checklist for single family home development apps. Suggest clarification.

6.07.02.C Should the relative location be oriented to approved water-oriented developments and uses on-site only or should consideration of such uses on adjacent sites be considered?

6.08 Appears to be necessary anywhere within Renton jurisdiction? Why is this a subsection of SMP? Isn't there a city-wide policy? If not, why not?

6.08.1.E Incomplete statement.

Illustrations for calculations/placements per footnotes of Table 6.09 would be very helpful.

7.02.01.C.1. How does transportation concurrency fit in here?

7.02.01.H. What is the standard governing calculations, # of stalls, etc?

7.03.01.B.2 Actor to perform review is missing from the sentence. Also 7.03.01.B.3

7.03.01.B.3 What is the definition of "substantial number of people"?

7.03.01.F.1 What is the definition of "substantial number of residences"?

7.04 Suggest "...suitable for harbors..."

7.04.01.E Unclear. Passive voice does not match surround code and makes responsibility/allowed use unclear.

7.05.01.C.1 Inconsistent with 7.05.01.A. "Should" should be replaced with "shall".

7.05.01.C.5.b Currently says "...all other parking spaces shouldshall be sited..." Please pick one.

7.05.01.D.1.b. What are the enforcement methodologies? Penalties?

7.05.01.D.1.e. And 7.05.01.D.2. Should indicate that signage must be reviewed and approved.

7.06.01.B Conflicts with logical consideration and testimony of construction company representative's presentation i.e. Floating docks present more fish and sun blockage than piered. On what analysis is this policy based? Also see 7.06.04.A for potential conflict.

7.06.01.C Suggest "preferred" instead of "encouraged".

7.06.02.B. Demonstration that shared moorage is not available seems a low standard. I would expect that the default situation will always be that moorage is not "available". Should there not be a requirement to attempt to obtain shared moorage, and upon impossibility of that – provide documentation of the effort.

7.06.03.C.4 appears to conflict with 7.06.03.D.4 If this is public land, shouldn't access and use be public? Also appears to conflict with 7.07.03.

7.06.03.D.1 How is use restriction managed, monitored and enforced? What would trigger new use re-evaluation?

7.06.04.B What is the standard defining "safe and sound"? How is condition managed, monitored and enforced?

7.06.04.C Should language be added to say something like: "subject to clearing and grading (or other applicable) permit application and approval."

7.06.04.F Does there need to be a definition of "first set of piles"? This term is also repeated at 7.06.05.B.6 and

7.06.05.C.3.d.

7.06.05.A What about the cases where there is shared ownership (i.e. family home with siblings jointly inheriting)? Shouldn't this be specified by tax parcel? 7.06.05.C.3.d has a similar construction that should also be considered.

7.06.05.B.2 The width standards are not consistent. Some are “walkway”, some appear to include the the support structures. Suggest should be consistent measurement reference.

7.06.05.B.4 and 5 Language is not strictly consistent - “property lines” and “a side lot line”. This may be fine, but I ask that it be reviewed.

7.06.05.C.3.b.i. This width is the only width standard that does not directly match the residential width standard. Is it supposed to match?

7.06.05.C.2 Suggest “executed” instead of “prepared” and that “, and” be added to the end of the paragraph before the enumerated sub-sections.

7.06.07.A.1 This is awkwardly worded in the red-line version.

7.07.01.D.3 Is “observe” sufficiently strong language? How is this managed, monitored and enforced?

7.07.03.C What is the standard by which this requirement be evaluated?

7.08.01.E. Should a Geotech report be required? Perhaps a “may be required” statement? Also the wording is somewhat awkward.

7.08.01.G Seems redundant. How is this different than 7.08.01.E. ?

7.08.01.H.1 This is the only one of these subsections that has a “may” clause. All the others have “shall” clauses. Suggest reconsideration to ensure language is sufficiently strong.

7.09.01.B.3 and 4 Should reference to specific landscape standards or “complete streets” be included?

7.09.01.B.7 Please pick either “should” or “shall”.

7.09.01.B.11. Suggest replacing “should” with “shall”

7.09.03.B.1 What does “in liking” mean? Suggest re-wording.

7.10.02.H.1.b What specific standard/document will govern whether “new landscaping is determined to be more desirable” and how will this be weighed against the ecological value of restoration?

7.10.04.B. Last word of first sentence: Suggest “signals” instead of “systems”. Alternately, reword to discuss communication systems infrastructure, which may actually be preferred.

8.01.02.D Suggest: New sentence beginning at “less”. In final sentence of this paragraph, - 2 typos. “, and” should be “, an” and “mot” should be “more”.

8.01.02.E.3. Notice subsections are being deleted. Why?

8.01.02.H What best available science, other regulation, precedent and/or policy is the basis for offering a waiver from vegetation buffers for development separated from shoreline by public roads? I'm looking for the background reasoning.

8.01.02.J.1 Wording is a bit awkward.

8.01.02.J.4 Is incomplete. Final sentence ends in the middle.

Table 8.01 Requirement of “balanced” for Lk WA Reach I but not for Reach G. What is the reasoning and supporting best available science, other regulation, precedent and/or policy?

Table 8.01 Cedar River B – Some text appears to be missing from the 1st sentence.

Table 8.01 Cedar River C – Generally ask for further elaboration of what will be required under the phrase “subject to public access set back from the water’s edge and limited water oriented use adjacent to the water’s edge.”

Table 8.01 Black/Springbrook A – Generally ask for further elaboration of what we should expect to be required and what exceptions from the rules will be allowed under “recognizing the constraints of existing transportation and public facilities.”

Table 8.01 Springbrook C – What “management plans” are referenced here and may I get copies?

Table 8.01 Lake Desire A – This is a statement of what is only... missing the policy direction text.

Table 8.01 Lake Desire A – Last 3 reaches all listed as A.

8.02.2.A Awkward wording.

8.03.02.C.4.D. Why is the timing window requirement proposed for deletion?

8.03.02.C.5.a and b Should there be text here identify the need for approval of clearing/grading and other applicable permits?

8.03.02.C.7 Awkward wording.

8.03.02.C.8.c Allowance of temporary stockpiling appears to conflict with 8.03.02.C.8.e. Why is this exception proposed to be allowed? Shouldn’t there be comparable impact limitations for temporary as for permanent?

8.04.01 Awkward wording.

8.04.02.C Suggest “Certification by the design professional shall be required...”

8.04.02.E.2 Suggest “shall” instead of “should”.

8.04.02.K Are there any areas that fit the criteria currently known? Is an investigation/inventory appropriate now? If not, when? Should such an inventory and program be implemented before the identified work can be authorized under this code?

8.04.02.M.1 Suggest changing the only “or” in this subsection to an “and”.

8.07.01 Is this text strong enough? Should the “should”s be “shall”s?

8.07.02 D What specific standard/document will govern “significantly detrimental to adjacent parcels”? The standard should be clear and readily available to adjacent property owners in order to understand the breadth and limitations of their right to protect their interests.

4-9-197 B.9 Awkward wording.

4-9-197 B.10.c.i and ii The time periods do not match. Why?

4-9-197 C.18 Shorelines naturally shift. How are the consequences of stream migration addressed? The path of the Cedar River today is not what it was 100 years ago and sections of it are not even what it was 15 years ago. I am uncomfortable with this subsection without significantly more detailed definition.

4-9-197 D.7 “...shall entitle those persons to a copy of the action taken on the application.” This is just weird. The public always has the right to this information. Shouldn’t this subsection instead encode the responsibility of the

City to provide a copy of the relevant documents similarly to the requirement to mail copies of SEPA Determinations to PORs?

4-9-197 F.2 It seems there needs to be a limit on how old the previously prepared reports are allowed to be.

4-9-197 F.3 Are the “additional rules” intended to indicate a formally adopted Administrative Rule? Whatever the instrument, the documents should be identified with sufficient specificity for the public to easily find and review them. Are there any currently adopted such rules and may I get copies?

4-9-197 P.2 Is it the State or the City's Jurisdiction? The text is unclear.

4-9-095 C. The end of this subsection appears to be missing.

4-9-095 F. The first part is awkwardly worded.

4-9-095 G. Throughout this whole section. There is repeated discussion of “area” but the measurement given is a lineal measure. Suggest clarification is necessary.

Rec'd 9-9-9

September 9, 2009

Attn: Erika Conkling
Planning Division
1055 South Grady Way
Renton WA 98055

Subject: Shoreline Master Program Update

Dear Erika

At this critical time it is important to re-state some key points:

- Lake Washington is an urban lake which was forever altered with the construction of the ship canal and locks when the lake was lowered.
- The lowering of the lake resulted in the creation of much of Renton's shoreline with bulkheads to contain the newly formed lots.
- The Shoreline Management Act of 1972 and the existing Shoreline Master Program have served the city and public well with the resulting preservation of wetlands and the halting of non-water related overwater structures.

This reality is the basis for the SMP updates.

I have also provided criteria which are key to gaining support by shoreline property owners for the SMP updates:

- Based on Sound Science that is reviewed and vetted
- Attain measurable environmental benefits
- Feasible and practical
- Cost effective
- Fair and equitable
- Not impose hardships
- Not impose risks to property or homes
- Avoid unintended consequences
- Flexible

In this letter I will discuss how these criteria are being met with the latest draft policies and regulations.

Sound Science

This remains the most significant issue that I believe is still open to discussion. I reviewed the scientific studies and reports that have been referred to and relied upon by the SMP update process. I enclose a report written by a Kirkland Shoreline owner & Ex -Metro executive Richard Sandaas who has spent much time evaluating the science much of the SMP changes are based upon.

Of the many examples in his report, none is more graphic than the list of 13 unanswered questions that are contained in a literature review prepared by the Watershed Company for the

City of Bellevue in 2000. Some nine years later these remain unanswered, once again underscoring the lack of sound science. These questions are attached to his report.

Another example is the problem that the *Chinook Conservation Strategy for WRIA 8* points out. With respect to the rise and fall of the lake it states "removing of bank hardening structures may not be sufficient to create sandy beaches". Still another is the statement in the *Synthesis of Salmon Research and Monitoring* study which says "very few fish are found with cobble and larger substrates". Yet in order for a beach to survive the wave exposure on the Renton shoreline it would have to consist of cobbles or rocks rather than the granular sand that the fish seem to prefer.

I point out in his report that now is the time for policy makers to fully understand the extent and applicability of the body of scientific knowledge that exists and make a determination as to which pathway forward to follow, with four suggested options to consider. The fourth being to waive the scientific deficiencies and base the SMP updates on policies and regulations which would be focused mostly on aesthetics and a hopeful outcome for habitat improvement. It is an important choice to make and one that should be carefully deliberated.

Attain measurable environmental benefits

This issue has not been addressed. The environmental benefits are based on hypothesis. It has been suggested that the City of Renton should embark on pilot programs in city owned shoreline where the shoreline restoration called for in the regulations would be constructed thereby providing a pilot program to answer this and other questions such as feasibility, along with a true understanding of the costs involved.

Feasible and practical

Bulkhead removal and shoreline landscaping are the standout issues here. Bulkheads exist along the shoreline for a key reason: they are necessary to contain the property that was developed with the lowering of the lake and which is exposed to significant storm impacts.

The landscaping requirements are based on the premise that it will provide shading of the water along with falling debris from overhanging vegetation. Neither will result due to the setting and sun exposure of Renton's shoreline. The shoreline has a western exposure so that there is little or no water shade possible from shoreline landscaping. Landscaping will have to be planted far enough away the OHWL to avoid being washed away by wind waves and boat wakes with the result that the trunks will be more than eight feet away from the waters edge. Even at this distance the root system would be vulnerable to erosion. The result is that to get any overhang at all, branches would have to be more than ten feet long. The shoreline landscaping requirements are not feasible, impractical, would not accomplish the intended result of shading and debris production, and unfavorably impact the property owner's view corridor and use of the property.

Cost effective

The SMP update process has never dealt with measurable results, cost impacts, or cost effectiveness. It is now time to do that before adopting the regulations. Are there other projects or improvements that could provide true environmental benefits? What about storm water runoff and non-point pollution? Addressing these issues would have far more beneficial impact on the lake than speculative benefits of landscaping and bulkhead removal. Would it not be better to spend money where the benefits are assured?

Fair and equitable

The private shoreline owner will bear extraordinary costs over the time these regulations are in place. The upland owners bear responsibility for storm water runoff and non-point pollution, as does the city. Higher densities as driven by the Growth Management Act have resulted in significant increases in impervious surfaces along with increases in vehicle miles traveled within the city. These are impacting water quality in streams and Lake Washington. A program to deal with these issues and a way of financing should be adopted concurrently with the SMP update process.

Not impose hardships; Not impose risks to property or homes

These criteria are embodied in Draft SMP and are of vital interest to all shoreline property owners. There are many unanswered questions about the risks imposed by bulkhead removal, the most important one being damage to a structure, although on-going land erosion also important.

Avoid unintended consequences

By their nature, these are not always possible to predict. One is the risk of impacting the integrity of the sewer interceptor pipes that lie along Renton's shoreline by bulkhead removal and other alterations. Another is the impact on adjacent properties by bulkhead removal and alternations on a single property in between. If erosion occurs, or structures are impacted, what is the remedy? Who is liable? The regulations attempt to deal with this by requiring a transition to adjacent properties, but would this really be effective?

Flexible

The development of Renton's residential and commercial shoreline over the years has resulted in a wide variety of configurations and settings which makes a "one size fits all" approach impractical. That approach likely would constrain innovative approaches. It also has the potential of discouraging a number of redevelopment projects with the resulting deterioration of housing stock. Mr. Dave Douglas of Waterfront Construction has provided numerous comments on this topic, particularly as it pertains to piers and bulkheads. Other areas of concern with a need for a flexible approach are set-backs, structure footprints, and landscaping.

Much work has gone into the SMP update process involving countless hours of Renton Planning Commission members, staff, and consultants and this should be recognized. However the questions and issues outlined in this letter are very important to shoreline property owners and I urge you to address them.

And, please keep in mind the reality mentioned at the beginning of this letter and build on that.



Jerry Brennan
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SHORELINE MASTER PROGRAM UPDATES

SCIENCE AND GREEN SHORELINES

The SMP update processes being conducted by the local governments on Lake Washington are leading to policies and regulations calling for removal of hardened shorelines and replacement with beaches; shoreline landscaping intended to provide shade, while at the same time requiring modification of piers to reduce shading; the reduction of piers, both in size and number; and placement of woody debris along the shoreline. The result will be the expenditure of millions of dollars by shoreline property owners and taxpayers. It also results in loss of usable shoreline and uplands by both private property owners as well as park users.

The drivers behind this are guidance and directives from the Department of Ecology and WRIA 8 taken from research and studies with the focus on salmon habitat. Even though DOE is requiring local governments to use "all available technical and scientific information" and to "solicit additional information through the public participation process", the body of science and research is not complete, contains suppositions and hypotheses, is sometimes contradictory, and cannot be applied broadly to all shoreline locations on Lake Washington. WRIA 8 has identified the Kirkland shoreline as a Tier 1 Migratory Corridor, but have studies been conducted to support that?

SCIENCE AND ITS DEFICIENCIES

VETTING OF SCIENCE

A number of researchers have been studying Lake Washington for many years. Those studies have found their way into a body of conventional wisdom that is widely used, yet a vetting process for these studies and research is yet to be established. If such studies are to be the basis for establishing public policy and cost property owners and taxpayers millions of dollars, it is reasonable to expect, and compelling, that claims based on science be tested before serving as the basis of public decision making. An example is the vetting of scientific claims developed in connection with the Columbia River. In that important watershed the Northwest Power Planning Council has implemented an Independent Science Review Board to review all studies before they are used as the basis of policy or rule making. With so much at stake a similar process should be invoked for the Lake Washington studies.

AREA SPECIFIC STUDIES – WHERE DO THE FISH TRAVEL?

The DOE Guidance Fall 2008 cites one study which "focuses on the affects of shoreline alterations to salmon migration" implying its applicability to all parts of Lake Washington and Lake Sammamish.¹ Yet this study was conducted for Cedar River Chinook salmon at the south end of Lake Washington. A close reading of the study and its conclusions shows considerable unanswered questions.

There are several other studies which are also specific to the Chinook at the south end of Lake Washington and one documents their migration along the western shore of Lake Washington past Seward Park to the Ship Canal.^{2 3} These localized studies are being used in SMP update processes as a basis for actions elsewhere on the lake, far away from the migratory route that these Cedar River Chinook utilize, and these fish are the majority of Chinook found in Lake Washington.

As to where fish travel in other parts of Lake Washington, here are excerpts from other studies:

The distribution of juvenile Coho salmon in Lakes Washington and Sammamish **is poorly understood.** ⁴

"...small numbers of Chinook salmon spawn in several tributaries to Lake Washington and Lake Sammamish but juvenile production from these streams **is unknown.**" ⁵

"**However little research has been conducted** to understand habitat use or finer-scale movement patterns of juvenile Chinook salmon during their migratory phase in late-May, June, and July." ⁶

Not much information is known about the habitat use of Coho salmon and steelhead in Lake Washington. ⁷

Outmigration behaviors of sockeye, Coho, and steelhead **have not been studied** in Lake Washington. ⁸

Juvenile Chinook in the North Lake Washington population are less shoreline-oriented than juveniles from the Cedar River. **More information is needed** about the trajectories of NLW juvenile Chinook in Lake Washington, particularly when they move offshore. ⁹

EFFECTS OF PIERS AND BULKHEADS ON SALMON

Study Excerpts:

No studies were located that specifically investigated the effects of piers and armored shorelines on the migration of juvenile Chinook and Coho salmon along lakeshores. ¹⁰

The question remains whether juvenile salmonids in lakes migrate under, or otherwise utilize, piers, or if they avoid them and/ or traverse their perimeter. ¹¹

Behavior at each structure appears to depend on a variety of factors...although these are based primarily on **anecdotal observation.** (example of non-scientific hypotheses) ¹²

Additionally, juvenile Chinook salmon may be attracted to boat ramps due to the docks in between the boat ramps **which may provide some overhead cover.** ¹³

The substrate and slope are similar along this shoreline and it is unclear why Chinook salmon prefer the north part over the south part. One possibility is that the north sites are close to a **pier which may provide overhead cover** if needed. ¹⁴

The result is that **resource managers are challenged** to recommend and implement Chinook salmon conservation strategies in Lake Washington with few references to unaltered lacustrine habitats, and an **incomplete understanding** of how alterations to the Lake Washington ecosystem affect juvenile Chinook salmon. ¹⁵

Shoreline processes of Lake Washington have been changed by the regulated maximum one foot rise and fall of the lake. (Regulated at the Locks) Therefore **the removal of bank hardening structures may not be sufficient to create sandy beaches...** ¹⁶

Studies of the relationship between shoreline armoring and predation on juvenile Chinook or Coho salmon in Lake Washington and Lake Sammamish **were not found.** ¹⁷

While no direct links were identified between predation and bulkheads, an intuitive connection exists. (This is an example of subjective or hypothetical conclusions found throughout many of the studies)¹⁸

SHORELINE VEGETATION, WOODY DEBRIS, AND BEACHES

Study Excerpts:

Very few fish are found with cobble and larger substrates.¹⁹ (This is significant because in many shoreline areas containing bulkheads, the replacement beaches would have to consist of cobbles and larger materials because sand will wash away in the first storm. Extensive beach restoration which must protect property from erosion would require cobble and larger granular material.)

The pattern of woody debris use is **somewhat unclear.**²⁰

Overall results indicated that there was **no difference** in the abundance of Chinook salmon between shoreline sections with small woody debris and sections without woody debris.²¹

WATER QUALITY

None of the studies listed report on water quality, yet this is fundamental to the health of all aquatic life. The WRIA 8 document develops a hierarchy for tributary streams and lists Juanita Creek (doesn't mention Forbes Creek) as a Tier 3 subarea. The actions for this category are enhancing water quality and hydrologic integrity.²² Thus for Kirkland, it would seem that the focus should be on storm water runoff and non-point pollution for tributary areas.

UNANSWERED QUESTIONS

The excerpts shown above confirm the issues facing the science underlying the SMP update processes. In addition, there are other questions raised by these studies. A comprehensive list is found in the literature search conducted by The Watershed Company for the city of Bellevue (Reference 4). Page 49 of this report contains 13 unanswered questions which should be reviewed by all local government policy makers. And, to further the body of science, they should be answered.

GREEN SHORELINES

There is another driver and that is a movement that has a push-pull relationship with the SMP update processes. It is called Green Shorelines. Other terms associated with this are salmon friendly, ecologically friendly, soft engineering, soft shorelines, alternative shoreline design, and living shorelines. It is a broad concept, applied to the entire shoreline of Lake Washington in a "one size fits all" way. As yet, it doesn't recognize the physical differences along the lake shoreline, exposure to storm driven waves and boat wakes, fish migratory patterns, extent of existing or potential fish habitat, or other unique characteristics.

Green Shorelines presumes that the restoration envisioned will achieve the goal of improved habitat and support salmon recovery. It also presumes that current scientific studies are sufficient to support and justify the goals for alternatives to shoreline hardening and justify the millions of dollars of expenditures to achieve them.

There is also an aesthetic component, typified by a number of comments lamenting the urbanization of Lake Washington beginning with the construction of the Ship Canal and the Locks and the lowering of the lake and the developments along the shoreline over the years.

A publication titled "*Green Shorelines; Bulkhead alternatives for a healthier Lake Washington*" has been prepared by the City of Seattle. It cites habitat restoration as a prime objective and provides resource information for bulkhead replacement. It does not reference specific scientific studies.

SHORELINE PROPERTY OWNERS' PERSPECTIVES

There is no group more interested and concerned about the health and ecology of Lake Washington than shoreline property owners. Furthermore there is no group that has more site specific knowledge about the lakeshore and the waters surrounding it than these property owners. For these reasons the criteria that support future actions must be well founded and credible.

Owners will support credible programs with these criteria:

- Attain measurable environmental benefits
- Feasible and practical
- Cost effective
- Fair and equitable
- Not impose hardships
- Not impose risks to property or homes
- Avoid unintended consequences
- Based on sound science that is reviewed and vetted**

There is a widespread belief among shoreline property owners that the credibility of the SMP update processes and the Green Shoreline movement is hampered by the lack of several of these criteria, a most significant one being vetted science.

HOW TO RESPOND TO THESE DEFICIENCIES AND QUESTIONS?

Policy makers must consider the scientific basis driving the SMP policies and resulting regulations and determine if it is sufficient, or not. The DOE Guidance states:

Ultimately, local government elected officials must consider all of the information put before them, including opposing views and opinions, judge their credibility and decide what standards best achieve SMP guidelines requirements, **given local circumstances**.

If it is determined that the science is not adequate or applicable as a basis for a local government's SMP update process, several options are available.

The first is to join with the other local governments on Lake Washington to put in place a vetting process for the science that is being used to support the SMP update processes. This effort should be led by the Department of Ecology and coordinated with the other regulatory agencies so that the end result is endorsed by all.

Second, further studies should be conducted to answer the questions still remaining, the most significant ones being those contained in the Literature Search mentioned above. The vetting process would likely raise additional questions and concerns.

Third, studies should be conducted that are site specific to a local government's shoreline so that actions can be implemented that will insure real environmental benefit. A key issue is where do salmon migrate, to

what extent to they utilize a local government's shoreline? It is not enough to say, 'It seems Chinook are all over the lake'.²³ One example of a site specific study is the *Movement and Habitat Use* study that was conducted for Chinook coming from the Cedar River to the Ship Canal (Reference 5). This study follows the rationale of the site specific requirement being imposed on private shoreline property owners who must provide an engineering report to justify the retention of bulkheads to protect their property.

The fourth option is to waive the scientific deficiencies and base the SMP updates on policies and regulations which would be focused mostly on esthetics and a hopeful outcome for habitat improvement.

In any event, now is the time for policy makers to fully understand the extent and applicability of the body of scientific knowledge that exists and make a determination as to which pathway forward to follow.

In the meantime, the real and serious issues of stormwater runoff and non-point pollution, true threats to fish habitat, continue.

Prepared by Richard Sandaas
Shoreline Property Owner
Chair, SPOCA, Shoreline Property Owners and Contractors Association
March 10, 2009
eride@msn.com

¹ R. A. Tabor and R. M Piaskowski, 2002. Nearshore Habitat Use by Juvenile Chinook Salmon to Lentic Systems of the Lake Washington Basin. Annual Report, 2001. U.S. Fish and Wildlife Service, Lacey, WA.

² R. A. Tabor, J. A. Schuerer, H. A. Gearns, and E. P. Bixler. 2004. Nearshore Habitat Use by Juvenile Chinook Salmon to Lentic systems of the Lake Washington Basin. Annual Report, 2002. U.S. Fish and Wildlife Service, Lacey WA.

³ Multiple Contributors. 2008. Synthesis of Salmon Research and Monitoring. Seattle Public Utilities, U.S. Army Corps of Engineers

⁴ T. Kahler, M. Grassley, and David Beauchamp, 2000. A Summary of the Effects of Bulkheads, Piers, and Other Artificial Structures and Shorezone Development on ESA-listed Salmonids in Lakes. City of Bellevue. Page 9

⁵ Mark T. Celedonia, R. A. Tabor, S. Sanders, D. W. Lantz, and I. Grettenberger, 2008. Movement and Habitat Use of Chinook Salmon Smolts and Two Predatory Fishes in Lake Washington and the Lake Washington ship Canal. U. S. Fish and Wildlife Service, Lacey, WA. Page 1

⁶ Ibid, Page 3

⁷ Multiple Contributors, Synthesis, Page 41

⁸ Ibid, Page 45

⁹ Chapter 4: Chinook Conservation Strategy for WRIA 8, Page 32

¹⁰ Kahler, A Summary of the Effects, Page 43

¹¹ Ibid, Page 44

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- ¹² Celedonia, Movement and Habitat, Page 2
- ¹³ Tabor, Nearshore Habitat, 2001, Page 49
- ¹⁴ Tabor, Nearshore Habitat, 2004, Page 29
- ¹⁵ Celedonia, Movement and Habitat, Page 1
- ¹⁶ Chapter 4: Chinook, Pages 32 and 33
- ¹⁷ Kahler, A Summary of the Effects, Page 36
- ¹⁸ Ibid, Page 36
- ¹⁹ Multiple Contributors, Synthesis, Page 40
- ²⁰ Tabor, Nearshore Habitat, 2004, Page 52
- ²¹ Ibid, Page 12
- ²² Chapter 4: Chinook, Pages 25 and 26
- ²³ R. A. Tabor, Comments, November 18, 2008, Chinook salmon usage of Kirkland shorelines

criteria in WAC 173-27-160 shall be on the applicant. Absence of such proof shall be grounds for denial of the application.

(3) The Director is authorized to impose conditions and standards to enable a proposed shoreline conditional use to satisfy the conditional use criteria.

25.08.070 Administration – General Standards

(1) Unless otherwise stated, this Program shall be administered according to the standards and criteria in RCW 90.58 and WAC 173-27.

25.08.080 Permit Process – Land Use Decisions

(1) Shoreline substantial development permits, statements of exemption, shoreline variances and shoreline conditional use permits shall be subject to all of the applicable requirements of SMC 20.05.

25.08.090 Permit Process – Appeals

(1) Appeals of the final decision of the City with regard to shoreline management shall be governed by the provisions of RCW 90.58.180.

(2) Appeals to the Shoreline Hearings Board of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use permit may be filed by the applicant/property owner or any aggrieved party pursuant to RCW 90.58.180.

(3) The effective date of the City's decision shall be the date of filing with the Department of Ecology as defined in RCW 90.58.140.

25.08.100 Non-conforming Use and Development – Alteration or Reconstruction

(1) Non-conforming Structures

(a) Reconstruction or expansion of the exterior envelope footprint of an existing, legally established non-conforming structure is allowed provided that the addition or reconstruction does not increase the degree of non-conformity except as allowed in SMC 25.07.080.

(b) Existing structures that were legally established but which are non-conforming with regard to the setback, area, bulk, height or density standards established by this Program may be maintained, reconstructed, or repaired, provided that the maintenance/reconstruction/repair does not increase the extent of non-conformity by encroaching upon or extending into the building setback area or shoreline setback or other area where new construction or use would not be allowed except as specifically allowed in SMC 25.07.080.

City of Sammamish

(e) ~~Existing legally established structures that are non-conforming as to SMC 21A.50 buffer requirements for wetlands, streams, ponds, or landslide hazard areas and their building setbacks may be modified, expanded, and/or replaced according to SMC 21A.50.060, sections (1)(a) and (1)(b). Structure non-conformity for any reason other than SMC 21A.50 buffer requirements for wetlands, streams, ponds or landslide hazard areas and their building setbacks must comply with the regulations of this section.~~

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Comment [CA99]: This is a CAO regulation.

Comment [CA95]: Shoreline permits do not exist.

(a) Interior remodels, reconstruction, and renovations shall not require a shoreline permit. Approval may be required through a city building permit.

(c) If a non-conforming structure is damaged by fire, explosion, or other casualty and/or natural disaster, it may be reconstructed to match the footprint that existed immediately prior to the time the damage occurred provided that all of the following criteria are met:

OK

(i) The owner(s) submit a complete application within twelve (12) months of the date the damage occurred; and

(ii) All permits are issued within two years of initial application submittal of the complete application, and the restoration is completed within two (2) years of permit issuance. This period may be extended for one additional year by the Director if the applicant has submitted the applications necessary to establish the use or activity and has provided written justification for the extension; and

(iii) If a non-conforming structure is damaged by fire, explosion, or other casualty and/or natural disaster and these criteria are not met, the City may require the applicant ~~shall~~ to plant the vegetation enhancement area with native trees and shrubs in accordance with SMC 25.06.020.

OK

(d) A non-conforming structure ~~which that~~ is moved outside the existing footprint must be brought into conformance with this Program and RCW 90.58.

(e) ~~Deck or float~~ If the repair or maintenance activity of a non-conforming dock changes the location of the structure or alters any dimension of the structure by more than ten percent (10%), it shall be subject to the regulations for new/replacement.

(2) Non-conforming lots

(a) An undeveloped lot, tract, parcel, site, or division of land located landward of the OHWM ~~which that~~ was legally established prior to the effective date of this Program, but which does not conform to the present lot size standards, may be developed if permitted by other land use regulations. Such development shall conform to all other requirements of this Program.

After consultation with these agencies, the archaeologist shall provide a final report that includes any recommendations from the affected tribe(s) and the State Office of Archaeology and Historic Preservation on avoidance or mitigation of the proposed project's impacts. The Planning Official shall condition project approval, based on the final report from the archaeologist, to ensure that impacts to the site are avoided or minimized consistent with federal and state law.

- b. Shoreline permits shall contain provisions that require developers to immediately stop work and notify the City if any potential archaeological resources are uncovered during land surface modification or development activity. In such cases, the developer shall be required to provide for a site inspection and evaluation by a qualified professional archaeologist, approved by the City, to ensure that all feasible valuable archaeological data is properly handled. The City shall subsequently notify the affected tribe and the State Office of Archaeology and Historic Preservation. Failure to comply with this requirement shall be considered a violation of the shoreline permit.
- c. If identified historical or archaeological resources are present, site planning and access to such areas shall be designed and managed to give maximum protection to the resource and surrounding environment.
- d. Interpretative signs, historical markers and other similar exhibits providing information about historical and archaeological features and natural areas shall be provided when appropriate.
- e. In the event that unforeseen factors constituting an emergency as defined in RCW 90.58.030 that necessitate rapid action to retrieve or preserve artifacts or data identified above, the project may be exempted from the permit requirement of these regulations. The City shall notify the State Department of Ecology, the State Attorney General's Office and the State Historic Preservation Office of such a waiver in a timely manner.
- f. Archaeological sites are subject to RCW 27.44 (Indian Graves and Records) and RCW 27.53 (Archaeological Sites and Records) and shall comply with WAC 25-48 or its successor as well as the provisions of this Chapter.
- g. Proposed changes to historical properties that are registered on the State or National Historic Register are subject to review under the National and State Registers' review process.

83.550 Nonconformances

1. General - This section establishes when and under what circumstances nonconforming aspects of a use or development must be brought into conformance with this Chapter. You need to consult the provisions of this section if there is some aspect of the use or development on the subject property that is not permitted under this Chapter.
2. When Conformance is Required - If an aspect, element or activity of or on the subject property conformed to the applicable shoreline regulations in effect at the time the aspect, element or activity was constructed or initiated, that aspect, element or activity may continue and need not be brought into conformance with this Chapter unless a provision of this section requires conformance. Further, nonconforming structures may be maintained, altered, remodeled, repaired and continued; provided that nonconforming structures shall not be enlarged, intensified, increased or altered in any way that increases the extent of the nonconformity, except as specifically permitted under this section.
3. Abatement of Nonconformance That Was Illegal When Initiated - Any nonconformance that was illegal when initiated must immediately be brought into conformance with this Chapter. The City may, using the provisions of WAC 173-27, abate any nonconformance that was illegal when initiated.
4. Special Provision for Damaged Improvements - Non-conforming structures that are damaged or destroyed by fire, explosion, flood, earthquake or other casualty may be restored or replaced in kind, provided that, the following are met:

- a. The permit process is commenced within ~~eighteen~~ twenty-four (24) months of the date of such damage; and
 - b. The reconstruction does not expand, enlarge, or otherwise increase the non-conformity, except as provided for in this section; and
 - c. The reconstruction locates the structure in the same place where it was, or alternatively if moved, then the least environmentally damaging location relative to the shoreline and any critical areas; and
 - d. For existing residential structures built over the water, appropriate measures are taken to mitigate adverse impacts to the maximum extent feasible while still retaining the existing residential density, including but not limited to:
 - 1) Reducing the overwater footprint;
 - 2) Reducing the number or size of pilings to the extent allowed by site-specific engineering or design considerations;
 - 3) Softening existing hard shoreline stabilization measures to the extent allowed by site-specific characteristics;
 - 4) Raising the height of the structure off the water, provided that the height of the existing building is not increased; and
 - 5) Incorporating grating into the re-built structure where feasible.
5. Certain Nonconformances Specifically Regulated –
- a. General –
 - 1) The provisions of this section specify when and under what circumstances certain nonconformances must be corrected. If a nonconformance must be corrected under this section, the applicant must submit all information necessary for the City to review the correction as part of the application for any development permit. In addition, the City will not permit occupancy until the correction is made.
 - 2) If KZC 83.550.4 above of this section applies to a specific nonconformance, then the provisions of this section do not apply to that same nonconformance.
 - b. Non-conforming structure –
 - 1) A nonconforming structure that is moved any distance must be brought into conformance.
 - 2) Any structural alteration of a roof or exterior wall that does not comply with height, shoreline setback, or view corridor standards shall be required to be brought into conformance for the nonconforming height, setback or view corridor, except as provided otherwise in this Chapter. Excepted from this subsection is the repair or maintenance of structural members.
 - 3) Increases in structure footprint outside of the shoreline setback or wetland or stream buffer shall be allowed, even if all or a portion of the previously approved footprint is within the shoreline setback, wetland or stream buffer.
 - 4) If accessory structures are located within the shoreline setback, these existing nonconforming structures must be brought into conformance if the applicant is making an alteration to the primary structure, the cost of which exceeds 50 percent of the replacement cost of the structure.
 - 5) Non-conforming structures that are expanded or enlarged within the shoreline setback must obtain a shoreline variance; provided that, a non-conforming detached dwelling unit may be enlarged without a shoreline variance where the following provisions apply:
 - a) The non-conforming structure must have been constructed prior to December 1, 2006, the date of the City's *Final Shoreline Analysis Report*.



DRAFT SHORELINE SETBACK REGULATIONS



Purpose of Proposed Shoreline Setback

- Provides minimum area for riparian vegetation to have adequate support for fish and wildlife habitat and maintain ecological function of the lake
- Reduces impacts of noise and light on fish and wildlife habitat
- Provides minimum area for biofiltration of storm water runoff to reduce water quality impacts
- Protects structures from shoreline erosion
- Provides opportunity for natural or soft shoreline stabilization

Determining Factors for Width of Proposed Shoreline Setback

- Maintaining ecological functions provided by existing development by basing setback on existing built conditions currently present along shoreline for each shoreline environment
- 25' appears to be minimum setback needed to ensure protection of water quality and habitat
- Existing Kirkland shoreline setbacks vary greatly so had to find balance in meeting No Net Loss of the overall system while minimizing non-conformances
- Using % of average parcel depth allows setback to be based on individual size
- Establishing minimum setback for sufficient area to reduce impacts to water quality and protect habitat, and maximum setback assures deep lots are not overly burdened

ENVIRONMENTAL DESIGNATIONS	Draft Shoreline Setback Regulations
Residential Low (north of CBD), north of Lake Ave West Street End Park	30% of average parcel depth with 30' minimum and 60' maximum
Residential Low (north of CBD) south of Lake Ave West Street End Park	Average of the existing setback on adjacent properties with 15' minimum
Urban Mix Use and Residential Medium-High (CBD and south of CBD)	15% of average parcel depth with 25' minimum

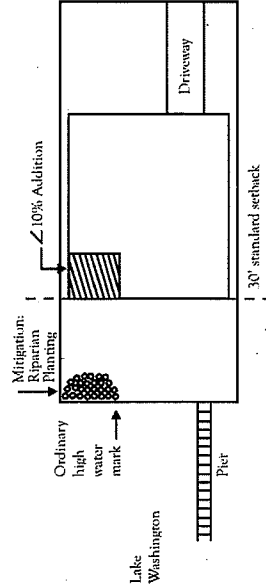
Note: For Residential Low, average parcel depth is measured to west side of street providing access to the property

Proposed Regulations to Offset Increase in Shoreline Setback

- North of CBD - increase height from 25' to 30' if shoreline setback is met
- North of CBD - reduce front yard setback from 20' to 10' if shoreline setback is met
- North of CBD - delete existing north property setback requirement and have 2 options: side yard setback of 5' with 2 equaling 15' OR 5' on each side with upper modulation at least 15% less than 1st floor
- South of CBD - reduce front yard setback by 1 ft for each foot required shoreline setback is increased if shoreline setback is met
- South of CBD - delete north property setback requirement and replace with side yard setback of 5' with 2 equaling 15'

Non-Conforming Structure	What Improvements Can be Made
Interior Remodels	Yes
Additions Outside of the Required Setback	Yes
Additions Within of the Required Setback	Can add within the setback, provided no more than 10% of the existing structure and no closer to the shoreline than the existing structure. Requires offsetting restoration.
Replacement	Must meet required setback, except when property has limited buildable area (<3,000 square feet) outside of setback and buffers, in which case structure may be replaced in kind. Reduction options are available.
In case of damage by fire or other casualty	May be restored or replaced in kind

Addition to Nonconforming Structure





SHORELINE SETBACK REDUCTION OPTIONS

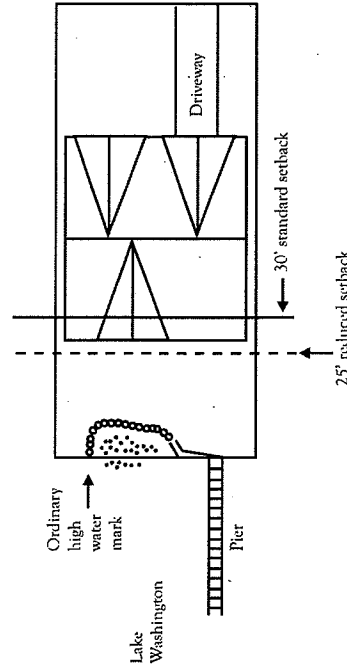


Shoreline Setback Reduction Options

	Standard Reduction in Required Setback, but No Less Than 25' Setback	Residential-L, south of Lake Ave W Street End Park, but No Less Than 15' setback
Removal of bulkhead or presence of natural shoreline (75% of linear frontage)	15%	Reduce required setback by 15 feet
Creation of shoreline cove or presence of natural shoreline or (15' minimum linear length)	5%	Reduce required setback by 5 feet
Daylighting stream	5%	Reduce required setback by 5 feet
Hard structural shoreline stabilization setback from OHWM between 2-4 feet with max slope of 3 vertical to 1 horizontal	5%	Reduce required setback by 5 feet
Soft shoreline stabilization measures installed waterward of OHWM (gravels, cobbles, boulders, logs & vegetation)	2%	Reduce required setback by 2 feet
Biofiltration mechanisms in place of piped discharge to lake	2%	Reduce required setback by 2 feet
Increase shoreline vegetation by an additional 5' in width	2%	Reduce required setback by 2 feet
Install pervious materials, such as driveways, patios, etc.	2%	Reduce required setback by 2 feet
Limit lawn area in shoreline setback to 50%	2%	Reduce required setback by 2 feet
Preservation or restore minimum 20% of lot area outside of shoreline setback with native vegetation	2%	Reduce required setback by 2 feet

Note: The reduction allowance applies to the required shoreline setback. For instance, if reduction is proposed in Residential Low, the shoreline setback could be reduced to 15% of the average parcel depth if property contains a natural shoreline along 75% of its linear shoreline frontage, but in no case less than 25 feet in width.

Shoreline Setback Reduction



- Required Shoreline Setback = 30% Average Parcel Depth
- With min. 15' of soft shoreline, 30' required setback reduced to 25' setback (from 30% to 25% of average parcel depth for 100' deep parcel)



MUCKLESHOOT INDIAN TRIBE

Fisheries Division

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Phone: (253) 939-3311 • Fax: (253) 931-0752



September 18, 2009

Erika Conkling
Senior Planner
City of Renton
Department of Community and Economic Development
1055 S. Grady Way
Renton, WA 98057

RE: Shoreline Master Program Update, July 2009 Review Draft

Ms. Conkling:

The Muckleshoot Indian Tribe Fisheries Division (MITFD) has reviewed the City of Renton's Draft Shoreline Master Program (SMP). You will find our attached comments in the interest of protecting and restoring the Tribe's treaty protected fisheries resources.

In general, we appreciate the City's commitment and ongoing efforts to protect and restore salmonid habitat. The Shoreline Master Program is one tool that City can use for this purpose. However, the Final SMP should be revised to acknowledge the importance of the Cedar River, Lake Washington, May Creek, and the Green River and associated shoreline tributaries for the Tribe's ceremonial, commercial and substance fisheries. Tribal members fish in Lake Washington and the Green-Duwamish River, including areas within the City of Renton. The City needs to ensure that the SMP and its implementation do not continue the degradation of treaty protected fisheries resources or impact Tribal members' ability to access these resources. Our attached comments note several areas within the draft SMP that have a potential to have one or both impacts, and include recommendations to address the problem areas.

We appreciate the opportunity to review and comment on the SMP. We are available to meet to discuss these comments and answer any questions that the City may have. Please call me at 253-876-3116 to set up this meeting.

Sincerely,

Karen Walter
Watersheds and Land Use Team Leader

Cc: Barbara Nightingale, WDOE, NW Region

General comments

1. The Muckleshoot Indian Tribe Fisheries Division requests to receive all notices of application for projects seeking approval under the City's Shoreline Master Program regardless if the projects are seeking shoreline variances, exemptions, Substantial Development Permits or relief from the standards so that we may review these proposals and provide the City and Ecology with any comments that we may have in the interest of protecting and restoring the Tribe's treaty protected fisheries resources.
2. There are numerous typographical and formatting errors in the draft that we did not attempt to identify and change. We recommend that such edits be reflected in the next draft prior to the next review opportunity.

Specific comments by page and section number

3. Page 18, Table 4.04- While it may be desirable to have public access on both sides of the Cedar River along Reach A, the current public access trails along the Cedar River within Renton tend to preclude the establishment of vegetation and the potential relocation of levees that should be set back to allow wood placement and pool formation in the lower Cedar. Also, salmon (specifically sockeye and some chinook) spawn in the lower 4 miles of the Cedar River. The SMP needs to protect existing spawning habitat and maintain/create shaded holding pools for adult salmon that seek to migrate to upstream areas.
4. Page 18, Table 4.04 -We agree that the existing trail should be relocated further from the water's edge to allow revegetation and potential levee setbacks as part of future public park and river maintenance plans for Reach B of the Cedar River.
5. Page 22, 4.05.02(E)-This policy could lead to a loss of shallow water habitat needed for juvenile salmon survival in Lake Washington and spawning habitat for adult salmon in the Cedar River to accommodate recreation. Both types of habitat are needed to restore salmon populations in these waterbodies. It should be modified to exclude Lake Washington and the Cedar River.
6. Page 23, 4.06.02(E) - Marinas should be limited to commercial and industrial areas.
7. Page 24, 4.08.02- With respect to the proposed Shoreline Restoration Program, we may have comments once the details are developed.
8. Page 25, Section 5 Geographic Designations- The SMP needs maps showing where the proposed designations would occur. We may have additional comments once the maps area completed.
9. Page 25, 5.02.01(C)(3), Designation of the Natural Environment Overlay District- This policy would allow floodway management structures within 200 feet of Natural Environment areas as a conditional use. Instead, new floodway management structures should be located outside of the 200 feet regulated shoreline management areas within the natural environment designations because they will likely result in adverse site specific and cumulative impacts. Floodway management structures would permanently reduce or eliminate existing floodway functions or riparian areas, and/or preclude the restoration of these areas in this designation.

10. Page 27, 5.03.02(B), Use Regulations in the Urban Conservancy Environment Overlay District- This policy appears to be outdated and should be modified. The Shoreline Management Act WAC 173-26-241(3)(b) identifies aquaculture as an activity of statewide interest. These regulations do not identify it as such. There may be a need to construct small scale finfish facilities such as egg boxes or other measures to propagate or assist in salmon propagation. This should be an allowed use in this designation.
11. Page 27, 5.03.02(B), Use Regulations in the Urban Conservancy Environment Overlay District- This section should include scientific devices (i.e. fry traps or water quality monitoring equipment) as an allowed use in this designation. Scientific devices and monitoring equipment should be allowed in all the designations and overlays as allowed uses where they may be needed.
12. Page 28, 5.03.02(D)(2)(e), Parking Areas- Parking areas should be located outside of the regulated shoreline jurisdiction for both allowed and conditional uses.
13. Page 28, 5.03.02(F), Local Service Utilities- Major utilities and roads should all be located outside of the shoreline regulated jurisdiction as much as possible and where these structures cannot be located outside of the shoreline jurisdiction, then they should be required to fully mitigate for their impacts, including the permanent loss of functional riparian areas due to restrictions on establishing trees for safety and operational reasons.
14. Page 29, 5.04.02(C) Allowed Uses- K-12 Schools should not be allowed within the regulated shoreline jurisdiction within the Single Family Residential overlay as they are not water dependent or water oriented, generally large-scaled and will cause adverse impacts to existing vegetation and reduce opportunities to restore vegetation within the regulated shoreline jurisdiction.
15. Page 30, 5.04.03(B)(4), Conditional Uses, Public over-water trails should not be allowed within the regulated shoreline jurisdiction under any environmental designations because they create fill within the waterway, limit restoration opportunities, and are a source of noise and light that will likely increase predation on juvenile salmon dependent on Cedar River and Lake Washington.
16. Page 31, 5.04.03(E), Conditional Uses, Roads and Driveways not providing direct access to permitted primary uses and Helipads should not be allowed within the regulated shoreline jurisdiction under any environmental designations because they can result in permanent loss of shoreline functions and adversely affect salmon habitat.
17. Page 31, 5.05.02, Multifamily Allowed Uses, This section will allow many non-water dependent uses to be constructed within the regulated shoreline jurisdiction without a requirement that impacts be mitigated and there is no-net loss of shoreline functions. It should be modified accordingly.
18. Page 35, 5.06.03(D), Management policies- Public access should be required to be set back from restored areas with limited areas of access to the water's edge on Lake Washington.

19. Page 37, 5.09.02(D), Aquatic shoreline management policies- Critical saltwater areas do not exist within Renton.

20. Page 38, 6.03(2), Use Preference- Single family residences built within the regulated shoreline jurisdiction should be required to ensure no-net loss of ecological functions.

21. Page 39, 6.04.01, No Net Loss of Ecological Functions- All Shoreline use and development should be required to prevent or mitigate adverse impacts so that the resulting ecological condition does not become worse than the current condition and should restore shoreline functions to the fullest extent possible.

22. Page 39, 6.04.02, No Net Loss of Ecological Functions- When assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts must be considered and fully mitigated.

23. Page 42, 6.05.01(B), Use Compatibility and Aesthetic Effects- Night time lighting that shines on Lake Washington and the Cedar River is a serious problem for juvenile salmonids due to predation by avian and piscivorous predators. The SMP should include language that regulates night time lighting by restricting new lighting from shining on water, as well as, reducing existing nighttime lighting impacts.

24. Page 44, 6.06.02(C)(2), Public access requirements- This policy is confusing as worded. It appears that properties that are not required to provide vegetated areas are allowed wider public access areas that parallel the shoreline for its length, which could result in significant adverse impacts and loss of ecological functions and restoration opportunities.

25. Page 44, 6.06.02(C)(4), Public access requirements- City trail or transportation plans should be required to have development standards that meet the no net loss of ecological functions and restore ecological functions to the fullest extent possible.

26. Page 45, 6.06.03(A)(3), Public access development standards- Public trails indicated on the City's transportation, park, or other plans should be located outside of the regulated shoreline jurisdiction to the fullest extent possible.

27. Page 46, 6.06.03(B)(1), Public access development standards- As written, this policy will result in a net loss of ecological functions and reduce opportunities to restore ecological functions along the shoreline.

28. Pages 47-52, Table 6.06. Public Access by Reach- Trails should be required to provide fish passage wherever fish passage may be currently blocked due to culverts and other structures conveying streams.

29. Page 54, 6.07.02(D), Design and Performance Standards- The sentence in this standard "*The rights of treaty tribes to resources within their usual and accustomed areas shall be accommodated.*" should be its own policy separate from the rest of the paragraph. It should also be modified as follows:

Rights reserved or otherwise held by Indian Tribes pursuant to Treaties, Executive Orders or Statutes, including rights to hunt, fish, gather, and the right to reserved water, shall not be impaired or limited by any action taken or authorized by the City under its Shoreline Master Program, and such rights shall be accommodated.

30. Page 56, 6.09.02(D), Regulations- This regulation is too broad and will allow many non-water dependent uses to occur within the regulated shoreline jurisdiction and waterward ordinary high water mark without requiring a no-net loss of ecological functions and mitigation for unavoidable impacts.

31. Page 60, Table 6.09(12), Shoreline Bulk Standards- Footnote 12 will allow pathways to be up to 6 feet wide within vegetated conservation areas for access when the trail section of the SMP requires 5 feet wide trails. Also, the footnote should be modified to require impervious surfaces to be less than 5% within the first 100 feet from the Ordinary High Water mark and only when no other location is available, not the up to 50% impervious surface standard as proposed.

32. Page 60, Table 6.09(13), Shoreline Bulk Standards- Footnote 13 will allow pathways to be up to 6 feet wide within vegetated conservation areas for access when the trail section requires 5 feet wide trails. Also, the footnote should be modified to require impervious surfaces to be less than 5% within the first 100 feet from the Ordinary High Water Mark and only when no other location is available, not the up to 75% impervious surface standard as proposed.

33. Page 60, Table 6.09(14) and (15), Shoreline Bulk Standards- Footnotes 14 and 15 are too broad for Reaches B and C and will allow too many impacts within the vegetation conservation areas' 100 foot buffers.

34. Page 62, 7.01.01(A), Aquaculture Regulations- This regulation is too broad and will restrict aquaculture facilities from being located within the majority of Renton's shoreline designations. Aquaculture is a preferred use provided in meets the requirements in the State's shoreline guidelines. While we are unaware of any proposed facility currently, there may be a need to construct some kind of aquaculture facility within Renton's shoreline jurisdiction in the future.

35. Page 66, 7.03.01(D), Commercial Development Regulations- Non-water-dependent commercial uses should not be allowed overwater.

36. Page 66, 7.03.01(E), Commercial Development Regulations- The setbacks for non-water-dependent commercial buildings should be no closer than one hundred (100) feet from the ordinary high water mark regardless if public access is created or improved.

37. Page 67, 7.03.01(F)(3), Commercial Development Regulations- Display and exterior lighting should be designed and operated so as to prevent illumination over waterbodies

38. Page 67, 7.04.01(A), Industrial Regulations- There is no requirement in this section to protect and

restore shoreline vegetation for new or redeveloped industrial developments or mitigation for impacts to shoreline vegetation.

39. Page 68, 7.04.01(E), Industrial Regulations- Offshore log storage should not be allowed because of the potential for creating salmonid predator habitat.

40. Page 68, 7.05.01(2), Marinas Regulations- This regulation should also require marinas to not need dredging to accommodate moorage.

41. Page 68, 7.05.01(C)(7), Marinas Regulations-Covered overwater structures for vessel construction and/or repair work should not be allowed in Renton's shoreline jurisdiction. Lake Washington and the mouth of the Cedar River are important areas for juvenile salmon that need to be protected from additional overwater coverage. The other shoreline jurisdiction areas are too small or not appropriate for this type of commercial boating activity.

42. Pages 72-73, 7.07.04, Design Criteria-This section should have a maximum amount of overwater coverage in square feet for piers and docks. We recommend using the standards provided in the U.S. Army Corps of Engineers regulations in the Regional General Permit 3 (see [http://www.nws.usace.army.mil/publicmenu/DOCUMENTS/REG/RGP%203%20App%20Form%20Only%20\(6-13-05\)%20Form%20version.pdf](http://www.nws.usace.army.mil/publicmenu/DOCUMENTS/REG/RGP%203%20App%20Form%20Only%20(6-13-05)%20Form%20version.pdf))

43. There are other standards in the Regional General Permit 3 that should be included in this section too (i.e. location of first set of piles, height of structures from water surface, etc.)

44. Page 73, 7.07.04(F), Design Criteria-Nighttime lighting on piers, docks, and floats should be such that it does not illuminate the water surface including indirect or reflected light.

45. Page 74, 7.07.05(B)(7)(c), Design Criteria for Single Family Docks and Piers- If allowed, then boatlift canopies should be made of translucent materials.

46. Page 77, 7.07.07(A)(1), Design Criteria for Recreational, Commercial, and Industrial Docks- This regulation needs to be modified. There are no harbor areas within Renton and breakwaters should not be allowed in Lake Washington.

47. Page 77, 7.07.09, Variance to Pier and Dock Dimensions- Variances should only be allowed if there is truly no other alternative and the project can fully mitigate for its impacts.

48. Page 85, 7.10.04(B)(1)(b), Public Parking standards- Public parking should not be allowed within the regulated shoreline jurisdiction and certainly not within the 100 foot vegetation conservation buffer or along the water's edge.

49. Page 86, 7.09.04.01(B)(1) and (2), Helicopter Landing Facilities- Helicopter Landing Facilities should only be allowed within the shoreline regulated jurisdiction at existing airports. They should not be

allowed a single family homes or commercial developments because they require large areas to be devoid of vegetation and introduce noise and disturbance to juvenile salmon using the nearshore of Lake Washington.

50. Page 88, 7.11.02(G), Provisions for all utilities- Pipelines and cables on aquatic lands should not be permitted due to their construction and maintenance impacts to the nearshore habitat.

51. Page 89, 7.11.02(H), Landscaping requirements- If utilities must be located within the regulated shoreline jurisdiction and native trees are not allowed within the utility corridor due to concerns with tree roots or tree heights, then the utility project should be required to provide compensatory mitigation either elsewhere on site or off site to mitigate for the inability to restore the site with native trees.

52. Page 89, 7.11.03, Special provisions for pipelines- When a stream or river crossing is the only alternative, pipelines need to be located deep enough below stream and river channels such that lateral migration or channel bed aggradation conditions are allowed and the pipeline is not exposed resulting in streambank and channel bed hardening.

53. Page 90, 7.11.04(A)(2)(b), Underwater electrical transmission lines- Also need to avoid adverse impacts to Tribal treaty fishing access.

54. Page 90, 7.11.04(C), Major pipeline utilities- When a stream or river crossing is the only alternative, pipelines need to be located deep enough below stream and river channels such that lateral migration or channel bed aggradation conditions are allowed and the pipeline is not exposed resulting in streambank and channel bed hardening.

55. Page 93, 8.01.02(A)(2), Regulations- This regulation needs to be clarified to describe what is and what is not allowed in areas that have both shoreline jurisdiction and non-shoreline regulated waterbodies within the 200 foot jurisdiction. If we are interpreting the regulations correctly, then per 4-3-50(C)(5)(d)(ii), stormwater facilities are allowed within streams, wetlands, and Habitat Conservation areas; however, these same facilities are not allowed within the 100 foot vegetation conservation area of shorelines. The same is true of roads, trails and utilities that are allowed in Type 2-4 waters and do not have to meet the no net loss standard per 4-3-50.

In areas of overlap between the shoreline vegetation conservation standards and uses allowed within non-shoreline critical areas, it will be confusing as to what is and what is not allowed without clarification or a diagram or something.

56. Page 94, 8.01.02(B), Regulations- There needs to be standards that would increase the 100 foot minimum vegetation conservation buffer beyond just high blowdown and protected slopes. For example, if the regulated shoreline jurisdiction is already forested and the proposed use is not water dependent, then the regulated shoreline jurisdiction should be protected by increasing the 100 foot minimum buffer. Also the buffers should be measured based on the 100 year flood plain where applicable, not the ordinary high water mark.

57. Page 94, 8.01.02(D), Alternative Regulations for Single Family Lots- If the City is going to allow individual lots to have reductions (as low as 10 feet) of the vegetation conservation buffers based on lot depth, then these properties should also be required to contribute to a mitigation fund or restoration project to ensure that there is no net loss of shoreline functions and that shoreline restoration requirements will be met.

58. Page 97, 8.01.02(J)(3), Regulations- This regulation should be modified to remove the restriction on square footage for the removal of noxious and/or invasive plant species. These species should be removed in their entirety wherever possible and replaced with native species.

59. Page 98, 8.01.02(J)(5), Regulations-If existing Single Family Residences that are redeveloped or alternated are allowed to exclude 70% of the trees that would block their existing water views, then they should be required to contribute to a mitigation fund or restoration project to ensure that there is no net loss of shoreline functions and that shoreline restoration requirements will be met.

60. Page 99, Table 8.01, Vegetation Conservation Standards by Reach, Lake Washington Reach C- It is doubtful that the May Creek delta will be allowed to fully reform without future dredging because of the existing adjacent land uses (Barbee Mill Plat and private moorage).

61. Page 102, Table 8.01 Vegetation Conservation Standards by Reach, Green River Reach A- Areas exempt from meeting the vegetation conservation standards due to railroads should be required to contribute to a mitigation fund or restoration project elsewhere along the Green River.

62. Page 108, 8.03.02(C)(1), Dredging regulations- Dredging should not be allowed for new developments. They should be designed and located such that dredging is not needed.

63. Pages 110-111, 8.04.02(D), Shoreline stabilization-Each subsection should be modified by adding a requirement that shoreline stabilization is only allowed when a geotechnical analysis demonstrates that erosion from waves or currents is imminently threatening and that damage is expected to occur within three years if the shoreline stabilization is not constructed.

64. Page 112, 8.04.02(E), Existing shoreline stabilization-This regulation needs to be changed to allow existing shoreline stabilization structures stabilization is not the result of only when the erosion is not being caused by upland conditions, such as the loss of vegetation and drainage and a geotechnical analysis demonstrates that erosion from waves or currents is imminently threatening and that damage is expected to occur within three years if the shoreline stabilization is not constructed.

65. Page 112, 8.04.02(F), Geotechnical report requirements-This regulation is good; however, the sections that precede it do not necessarily require that a geotechnical report be completed. Also, if there are any differences between a geotechnical analysis and a geotechnical report, it should be noted in this section, or one common term should be used.

66. Page 114, 8.04.02(M)(4), shoreline stabilization, revetments-This regulation needs to be clarified

because the term "low, inner-most channel banks" is unknown and it is not clear that there are any commercial farmsteads within Renton's shoreline jurisdiction.

67. Page 115, 8.05.02(A)(1), Flood Control-We would appreciate a copy of the comprehensive flood control plan for Springbrook Creek that would apply to flood control projects authorized by the SMP. The stream is not identified in the 2006 King County Flood Hazard Management Plan.

68. Page 116, 8.07, Stream Alterations- Streams, rivers, and creeks within regulated shoreline jurisdictions should not be altered unless it is for restoration purposes and there should be no net loss of habitat and habitat area.

69. Page 119, 4-9-197(C)(5), Emergency actions- This regulation should be modified to require mitigation if emergency actions result in adverse environmental impacts.

70. Page 122, 4-19-97 (C)(14), Shoreline Exemptions, Aquatic Noxious Weeds- This regulation should require compliance with State aquatic noxious plant removal requirements, including alternatives to herbicides and application by licensed professionals.

71. Page 122, 4-19-97(C)(16)(c), Shoreline Exemptions, Projects to improve fish passage and habitat- These projects will also likely need a Corps permit in addition to an HPA.

72. Page 131, 4-10-095(G), Non-conforming uses- These regulations appear to conflict with the requirements in Table 6.09 and would allow more impacts to the regulated shoreline jurisdiction than Table 6.09.

Erika Conkling

From: Martin, Larry [LarryMartin@dwt.com]
Sent: Friday, September 11, 2009 5:10 PM
To: Erika Conkling
Cc: Martin, Larry; Robertc
Subject: 13350438_1
Attachments: 13350438_1.DOC

<<13350438_1.DOC>>
September 11, 2009

Via Electronic Mail

Ms. Erika Conkling
Renton Planning Commission
Renton City Hall Department of Community and Economic Development
1055 South Grady Way
Renton, WA, 98057

Re: Proposed Shoreline Master Program Amendments

Dear Ms. Conkling:

I am writing on behalf of the Cugini family who, through their family companies, Barbee Forest Products Company and Barbee Mill Company, own five parcels of Lake Washington waterfront property just south of the mouth of May Creek. The property includes water dependent uses and structures, including docks, a boathouse, a boat launch ramp and four single-family residential structures.

The docks and boathouse are a combination of old and new facilities. The boathouse and associated docks were constructed as legally permitted uses and structures in approximately 1950. From initial construction of the boathouse through the present time, the boathouse has been used by Mr. Alex Cugini and family members for moorage of various boats used for their personal recreation. Contrary to comments at your recent public meeting, the boathouse was never used to house small boats used in the Mill operations. Those boats were kept elsewhere on the Mill property. For the last twenty years, a 52-foot Ocean Alexander has been moored in the boathouse as it is today. A small caretaker's residence adjacent to the boathouse is also very old and was legally constructed prior to adoption of many, if not all of the regulations in place today.

Other improvements on the property are new. Three single family homes just south of the boathouse and caretaker's residence were permitted and constructed within the last several years as was the joint-use dock that serves the three homes. That dock is located at the south end of the five parcels.

Since the 1940's dredging has caused contributed to flooding and interfered with navigation. The deposition of silt has increased dramatically over the years as poorly regulated upstream development intensified and sand and gravel mining operations were conducted. With the development of the Barbee Mill residential community to the north of May Creek which included substantial land filling, current concerns about flooding have been eased. However, the continued rapid build-up of sediments continues and deposits are beginning again to interfere with navigation to and from the Cugini docks and property.

The build-up of sediment is occurring much more rapidly than predicted in one or more technical reports submitted in this SMP Update process, and as predicted by unsupported statements at the Commission's last meeting. Dredging was last performed about three years ago. Sediment deposits encroaching onto submerged portions of the Cugini property are readily observable from the shoreline today. Significant deposits can be observed at the support for the osprey platform and nest. The Cuginis have already had to divert from their

normal direct route in traveling by boat to or from the boathouse and dock to avoid shallow areas created by the sedimentation.

In anticipation of the need to again dredge on the submerged portions of their property in the near future, Robert Cugini has undertaken the years-long process of acquiring all state, federal and City of Renton permits required to continue the maintenance dredging. This permitting includes mitigation such as removal of creosoted pilings and replacement with metal pilings, replacement of solid docks with materials that allow light to penetrate into the water; placement of spawning gravel and other habitat enhancement along the waters edges. The City of Renton has issued permits for the dock remodel pursuant to regulations allowing improvements to legally non-conforming structures, and permits for the dredging.

Given the interests and actions summarized above, the Cugini family clearly has a very significant and vested interest in being able to continue to remove sediment that builds up on their property through maintenance dredging until a more permanent solution can be found. With this in mind, we submit the attached proposals for revisions to the draft SMP amendments and ask you to consider making the proposed changes set out in the attachment to this email.

Sincerely,
Davis Wright Tremaine LLP
Larry Martin

8.03 DREDGING

8.03.01 Principles

Removal of substrate from below the OHWM on streams and lakes can have substantial adverse impacts on geologic and hydraulic mechanisms important to the function of the water body, can disrupt elements of the food chain, and may result in sedimentation and water quality impacts. Dredging and dredge material disposal shall be done in a manner which avoids or minimizes significant ecological impacts and impacts which cannot be avoided should be mitigated in a manner that assures no net loss of shoreline ecological functions.

~~Dredging should be prohibited except where public benefits outweigh potential impacts and it is demonstrated that no net loss of ecological functions will occur.~~

[Reason for proposed change: The added language is a direct quote from Department of Ecology (DOE) guidance on shoreline master programs (See Attachment 1).

The proposed deletion is required to recognize that actions needed to prevent loss of private benefits such as water access to privately owned shoreline lots and docks can serve as the basis to allow dredging—not only public benefit.]

8.03.02 Regulations

A. Dredging is permitted only in cases where the proposal, including any necessary mitigation, will result in no net loss of shoreline ecological functions and is limited to the following:

1. Establishing, expanding, relocating or reconfiguring navigation channels ~~designated by the US Coast Guard~~ where necessary to assure safe and efficient accommodation of existing navigational uses. Maintenance dredging of established navigation channels and basins shall be restricted to maintaining previously dredged and/or existing authorized location, depth, and width.

[Reason for proposed change: The deleted language is too restrictive. Coast Guard designation is not a factor identified in the relevant portion of the DOE guideline which states:

“Dredging for the purpose of establishing, expanding, or relocating or reconfiguring navigation channels and basins should be allowed where necessary for assuring safe and efficient accommodation of existing navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided. Maintenance dredging of established navigation channels and basins should be restricted to maintaining previously dredged and/or existing authorized location, depth, and width.” (See Attachment 1).]

2. For flood control purposes, when part of a publicly adopted flood control plan.

3. For restoration or enhancement of shoreline ecological functions benefiting water quality and/or fish and wildlife habitat and approved by applicable local, state and federal agencies.

4. For development of approved water-dependent uses provided there are no feasible alternatives.

5. Dredging may be permitted where necessary for the development and

maintenance of public shoreline parks and of private shorelines to which the public is provided access. Dredging may be permitted where additional public access is provided.

6. Maintenance dredging of existing legally established boat moorage slips including public and commercial moorage and moorage accessory to single family residences, provided that deepening beyond the conditions present when the moorage was established is prohibited, and in the absence of evidence of such conditons. ~~Dredging may not be permitted to provide a draft for private boats in excess of three (3) feet. Dredging may be disallowed to maintain depths of existing private moorage where it may adversely affect ecological functions and where alternatives such as utilization of shallow draft access to mooring buoys is feasible.~~

[Reason for proposed change: The purpose of mainenance dredging is to preserve navigability and historical water access to shorelines. The DOE guidelines do not require that owners of shoreline property, moorage facilities and boats that are not “shallow draft” such as sailboats or larger boats with typical keel depth abandon the right to use that property. The relevant portion of the DOE guideline states:

“Maintenance dredging of established navigation channels and basins should be restricted to maintaining previously dredged and/or existing authorized location, depth, and width”. (See Attachment 1).]

7. Minor trenching to allow the installation of necessary underground pipes or cables if no alternative, including boring, is feasible, and:

- a. Impacts to fish and wildlife habitat are avoided to the maximum extent possible.
- b. The utility installation shall not increase or decrease the natural rate, extent, or opportunity of channel migration.
- c. Appropriate best management practices are employed to prevent water quality impacts or other environmental degradation.

8. Dredging is performed pursuant to a remedial action plan approved under authority of the Model Toxics Control Act, or pursuant to other authorization by the Department of Ecology, U.S. Army Corps of Engineers, or other agency with jurisdiction, after review of the proposed fill for compliance with the policies and standards of this Program.

9. Dredging is necessary to correct problems of material distribution and water quality, when such problems are adversely affecting aquatic life or recreational areas.

B. Dredging is prohibited in the following cases:

~~1. Dredging is prohibited within the deltas of the Cedar River and May Creek except for purposes of ecological restoration, for public flood control projects, or for water dependent public facilities~~

[Reason for proposed change: Dredging is tightly restricted by the proposed regulations. It is highly regulated by federal agencies and permitting that is required in addition to Renton permitting. A prohibition is not required by the DOE guideline. It is not consistent with

regulations and policies of other jurisdictions (See Attachment 2). If the prohibition is retained, at a minimum, the exceptions to the prohibition should include “maintenance dredging consistent with Section 8.03.02 (A)(6)”.]

21. Dredging is prohibited solely for the purpose of obtaining fill or construction material, which dredging is not directly related to those purposes permitted in Subparagraph .02.A above, is prohibited.

32. Dredging for new moorage is prohibited.

~~4. Maintenance dredging is prohibited for facilities established for water dependent uses in cases where the primary use is discontinued unless the facility meets all standards for a new water dependent use.~~

[Reason for proposed change: The deleted language is ambiguous and may be inconsistent with Renton nonconforming use/structure regulations. Nonconformances should be regulated by one set of regulations rather than multiple conflicting regulations.]

C. Review Criteria

1. New development should be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.
2. All proposed dredging operations shall be designed by an appropriate State licensed professional engineer. A stamped engineering report and an assessment of potential impacts on ecological functions shall be prepared by qualified consultants shall be submitted to the Renton Development Services Division as part of the application for a shoreline permit.
3. The responsibility rests solely with the applicant to demonstrate the necessity of the proposed dredging operation.
4. The responsibility rests solely with the applicant to demonstrate that
 - a. There will be no net loss of ecological functions including but not limited to adverse effect on aquatic species including fish migration.
 - b. There will be no adverse impact on recreational areas or public recreation enjoyment of the water.
5. Adjacent bank protection:
 - a. When dredging bottom material of a body of water, the banks shall not be disturbed unless absolutely necessary. The responsibility rests with the applicant to propose and carry out practices to protect the banks.
 - b. If it is absolutely necessary to disturb the adjacent banks for access to the dredging area, the responsibility rests with the applicant to propose and carry out a method of restoration of the disturbed area to a condition minimizing erosion and siltation.
6. The responsibility rests with the applicant to demonstrate the proposed dredging will avoid conditions that may adversely affect adjacent properties including:
 - a. Create a nuisance to the public or nearby activity.
 - b. Damage property in or near the area.
 - c. Cause substantial adverse effect to plant, animal, aquatic or human life in or near the area.
 - d. Endanger public safety in or near the area.

7. The applicant shall demonstrate control contamination and pollution to water, air, and ground through specific operation and mitigation plans.
8. The applicant shall demonstrate that the disposal of dredged material will not result in net loss of ecological functions or adverse impacts to properties adjacent to the disposal site.
 - a.. The applicant shall provide plans for the location and method of disposing of all dredged material.
 - b.. Dredged material shall not be deposited in a lake, stream, or marine waters except if approved as habitat enhancement or other beneficial environmental mitigation when the requirements of RMC 4-19-197 C (16) have been satisfied or part of a contamination remediation project approved by appropriate State and/or Federal agencies or is approved in accordance with the Puget Sound Dredged Disposal Analysis (PSDDA) evaluation procedures for managing in-water disposal of dredged material by applicable agencies, which may include the U.S. Army Corps of Engineers pursuant to Section 10 (Rivers and Harbors Act) and Section 404 (Clean Water Act) permits, and Washington State Department of Fish and Wildlife Hydraulic Project Approval (HPA).

[Reason for proposed change: The regulations should not preclude use of dredged material such as clean sand and gravel in shoreline habitat enhancement projects not associated with remediation of regulated contamination. RMC 4-19-197 C (16) exempts the following from the requirement to obtain a substantial development permit:

“16. A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:

- a. The project has been approved in writing by the Department of Fish and Wildlife as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose.*
- b. The project has received hydraulic project approval by the Department of Fish and Wildlife pursuant to chapter 75.20 RCW.*
- c. The Development Services Division has determined that the project is consistent with this Master Program.”]*

- c. In no instance shall dredged material be stockpiled in a shoreland area that would result in the clearing of native vegetation. Temporary stockpiling of dredged material is limited to 180 days.
- d. If the dredged material is contaminant or pollutant in nature, the applicant shall propose and carry out a method of disposal that complies with all regulatory requirements.
- e. Permanent land disposal shall demonstrate that:
 - i. Shoreline ecological functions will be preserved, including protection of surface and ground water.
 - ii. Erosion, sedimentation, floodwaters or runoff will not increase

adverse impacts to shoreline ecological functions or property.
iii. Sites will be adequately screened from view of local residents or passersby on public right-of-ways.
f. Dredging not associated with maintenance of existing facilities, water dependent uses, habitat enhancement; a remedial action plan approved under authority of the Model Toxics Control Act, or pursuant to other authorization by the Department of Ecology, U.S. Army Corps of Engineers, or other agency with jurisdiction, or public recreation facilities or uses shall require a Shoreline Conditional Use.

[Reason for change: Within Renton multiple environmentally degraded and/or contaminated shoreline sites have been identified. Remediation of these sites is highly encouraged and regulated by state and federal agencies. The added requirement of obtaining a Renton shoreline conditional use permit would not enhance environmental protection and would only add additional unnecessary process, delay and expense to environmentally beneficial, costly remedial actions.]

4-9-197 SHORELINE PERMITS

C. EXEMPTIONS FROM PERMIT SYSTEM:

The following shall not be considered substantial developments for the purpose of this Master Program and are exempt from obtaining a Shoreline Substantial Development Permit (SSDP) . An exemption from a SSDP is not an exemption from compliance with the Act or this Program, or from any other regulatory requirements.

1. Any project with a certification from the Governor pursuant to chapter 80.50 RCW.
2. Any development of which the total cost or fair market value does not exceed five thousand dollars (\$5,000.00), if such development does not materially interfere with the normal public use of the water or shorelines of the State.
3. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements.
 - a. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition, including maintenance dredging in conformance with Section 8.03.02 (A)(6) when approved by all applicable state and federal agencies.

[Reason for proposed change: Dredging is highly regulated by federal and state agencies. Permitting literally takes years, involves detailed studies and mitigation and costs hundreds of thousands of dollars. Permitting for past and future maintenance dredging of May Creek sedimentation has substantially exceeded the cost of the work itself. Nothing would be added by requiring the additional step of a Renton Shoreline Substantial Development Permit. If the permit is required, at a minimum the provisions in the Master Program that place burdens of proof upon the applicant should be deemed to be satisfied by evidence that applicable federal and state permits have been obtained, and additional conditions should not be placed on the federal and state approvals by the City.]

- b. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to the shoreline resource or environment.
- c. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including, but not limited to, its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment.

Proposed new section:

Maintenance dredging authorized by Section 8.03.02 for which all required state and federal approvals have been obtained shall not be subject to the provisions of RMC 4-4-060 Grading, Excavation And Mining Regulations.

[Reason for proposed change: As a matter of literal interpretation, dredging activities have been determined to fall within the scope of Renton's grading, excavation and mining regulations. In the case of dredging within shoreline areas regulated by extensive federal and state regulations, as well as Renton's Shoreline Master Program, additional regulation under this section is not warranted and does not add meaningful regulatory oversight. Note, a change to the text of Section 8.03.02 to implement this exemption should also be made.]

4-9-197 SHORELINE PERMITS

F. REVIEW CRITERIA:

4. Burden of Proof on Applicant: The burden of proving that the proposed substantial development is consistent with the criteria which must be met before a permit is granted shall be on the applicant, provided that in the case of maintenance dredging that conforms to the terms and conditions of unexpired federal and state permits approving the dredging, conformance with such terms and conditions shall be deemed to constitute proof that the activity properly avoids or minimizes significant ecological impacts, and in the case of impacts which cannot be avoided, that such impacts will be mitigated in a manner that assures no net loss of shoreline ecological functions.

[Reason for proposed change: Dredging is highly regulated by federal and state agencies. Permitting literally takes years, involves detailed studies and mitigation and costs hundreds of thousands of dollars. Permitting for past and future maintenance dredging of May Creek sedimentation has substantially exceeded the cost of the work itself. Nothing would be added by placing the additional burden upon the applicant of re-justifying the proposed activity. Note, if the requirement of a substantial development permit is eliminated in the case of federally and state approved maintenance dredging as we propose, this change is still required because the project must still meet all requirements of Renton's SMP even though a permit is not required. This

change would allow the applicant to be deemed to satisfy the identified requirements through the federal and state permit terms and conditions.]

J. TIME REQUIREMENTS FOR SHORELINE PERMITS:

1. Applicability and Modification at Time of Approval:

a. The time requirements of this Section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized under this Program, provided that in the case of maintenance dredging approved by all applicable state and federal agencies, time requirements of this Section, including time periods for commencement of the activity, completion of the activity and duration of the approval, shall be as provided in such state and federal permits.

[Reason for proposed change: Maintenance dredging is by its nature an ongoing activity, the frequency and duration of which is dictated by weather, stream flow, erosion caused by upstream existing and future development and other factors that are not subject to artificial time deadlines and that are out of the applicant's control. The high degree of investment of time and money required to obtain federal and state permits for this activity should not be devalued by imposition of time constraints that have not been determined in the context of the facts and analysis presented in those detailed state and federal processes.]

b. If it is determined that standard time requirements of subsections J2 and J3 of this Section should not be applied, the Development Services Division shall adopt appropriate time limits as a part of action on a substantial development permit upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of this Master Program and RCW 90.58.143. If it is determined that standard time requirements of subsections J2 and J3 of this Section should not be applied, the Hearing Examiner, upon a finding of good cause and with the approval of the Department of Ecology, shall establish appropriate time limits as a part of action on a conditional use or variance permit. "Good cause" means that the time limits established are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted.

c. Where specific provisions are not included to establish time limits on a permit as part of action on a permit by the City or the Department of Ecology, the time limits in subsections J2 and J3 of this Section apply.

d. Requests for permit extension shall be made in accordance with subsections J2 and J3 of this Section.

2. Construction Commencement:

a. Unless a different time period is specified in the shoreline permit as authorized by RCW 90.58.143 and subsection J1 of this Section, construction activities, or a use or activity, for which a permit has been granted pursuant to this Master Program must be commenced within two (2) years of the effective date of a shoreline permit, or the shoreline permit shall terminate, and a new

permit shall be necessary. However, the Development Services Division may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed with the Division before the expiration date, and notice of the proposed extension is given to parties of record and the Department of Ecology.

b. Construction activities or commencement of construction referenced in subsection J2a of this

Section means that construction applications must be submitted, permits must be issued, and foundation inspections must be completed before the end of the two (2) year period.

3. Construction Completion: A permit authorizing construction shall extend for a term of no more than

five (5) years after the effective date of a shoreline permit, unless a longer period has been specified

pursuant to RCW 90.58.143 and subsection J1 of this Section. If an applicant files a request for an

extension prior to expiration of the shoreline permit the Development Services Division shall review the

permit and upon a showing of good cause may authorize a single extension of the shoreline permit for a

period of up to one year. Otherwise said permit shall terminate. Notice of the proposed permit extension

shall be given to parties of record and the Department of Ecology. To maintain the validity of a shoreline

permit, it is the applicant's responsibility to maintain valid construction permits in accordance with

adopted Building Codes.

4. Effective Date:

a. For purposes of determining the life of a shoreline permit, the effective date of a substantial development permit, shoreline conditional use permit, or shoreline variance permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in subsections J2 and J3

of this Section do not include the time during which a use or activity was not actually pursued due

to the pendency of administrative appeals or legal actions, or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

b. It is the responsibility of the applicant to inform the Development Services Division of the pendency of other permit applications filed with agencies other than the City, and of any related administrative or legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the Division prior to the expiration date established by the shoreline permit or the provisions of this Section, the expiration of a permit shall be based on the effective date of the shoreline permit.

c. The City shall issue permits within applicable time limits specified in the Type III and Type VI

review processes in RMC 4-8-080H. Substantial development permits for a limited utility extension as defined in RCW 90.58.140(11)(b) or for the construction of a bulkhead or other measures to protect a single family residence and its appurtenant structures from shoreline erosion shall be issued within twenty one (21) days of the last day of the comment period specified in RMC 4-9-197E3.

5. Review Period – Construction Authorization:

a. No construction pursuant to such permit shall begin or be authorized and no building, grading

or other construction permits or use permits shall be issued by the City until twenty one (21) days

from the date the permit was filed with the Department of Ecology and the Attorney General, or until all review proceedings are completed as were initiated within the twenty one (21) days of the date of filing. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130.

b. If the granting of a shoreline permit by the City is appealed to the Shoreline Hearings Board, and the Shoreline Hearings Board has approved the granting of the permit, and an appeal for judicial review of the Shoreline Hearings Board decision is filed, construction authorization may occur subject to the conditions, time periods, and other provisions of RCW 90.58.140(5)(b).

4-10-095 SHORELINE MASTER PROGRAM – NONCONFORMING USES, ACTIVITIES, AND STRUCTURES:

A shoreline use or development which was lawfully constructed or established prior to the effective date of the applicable Shoreline Master Program, or amendments thereto, but which does not conform to present regulations or standards of the program, may be continued ~~provided that:~~

~~**A. Nonconforming Structures:** Nonconforming structures shall be governed by subject to regulations set forth in RMC Chapter 4-10.-050.~~

[Delete remainder of section]

[Reason for change: The proposed regulations are too complex and confusing to be understood by waterfront owners. They will be very cumbersome to administer. The City has experience administering its existing regulations. A single set of regulations for all nonconformances should govern whether the structure, use or lot is inside or outside of the shoreline zone.]

Attachment 1

Ecology Guideline: WAC 173-26-231(3)(f) Shoreline Modifications-dredging and dredge material disposal

(f) **Dredging and dredge material disposal.** Dredging and dredge material disposal shall be done in a manner which avoids or minimizes significant ecological impacts and impacts which cannot be avoided should be mitigated in a manner that assures no net loss of shoreline ecological functions.

New development should be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging. Dredging for the purpose of establishing, expanding, or relocating or reconfiguring navigation channels and basins should be allowed where necessary for assuring safe and efficient accommodation of existing navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided. Maintenance dredging of established navigation channels and basins should be restricted to maintaining previously dredged and/or existing authorized location, depth, and width.

Dredging waterward of the ordinary high-water mark for the primary purpose of obtaining fill material shall not be allowed, except when the material is necessary for the restoration of ecological functions. When allowed, the site where the fill is to be placed must be located waterward of the ordinary high-water mark. The project must be either associated with a MTCA or CERCLA habitat restoration project or, if approved through a shoreline conditional use permit, any other significant habitat enhancement project. Master programs should include provisions for uses of suitable dredge material that benefit shoreline resources. Where applicable, master programs should provide for the implementation of adopted regional interagency dredge material management plans or watershed management planning.

Disposal of dredge material on shorelands or wetlands within a river's channel migration zone shall be discouraged. In the limited instances where it is allowed, such disposal shall require a conditional use permit. This provision is not intended to address discharge of dredge material into the flowing current of the river or in deep water within the channel where it does not substantially affect the geohydrologic character of the channel migration zone.

Attachment 2

King County Adopted Code (6-2008)

H. Excavation or dredging below the ordinary high water mark shall be permitted only:

1. When necessary for the operation of a water dependent or water related use;
2. When necessary to mitigate conditions which endanger public safety or fisheries resources;

3. As part of and necessary to roadside or agricultural ditch maintenance that is performed consistent with best management practices promulgated through administrative rules pursuant to the sensitive areas provisions of K.C.C. chapter 21A.24 and if:

- a. the maintenance does not involve any expansion of the ditch beyond its previously excavated size. This limitation shall not restrict the county's ability to require mitigation, pursuant to K.C.C. chapter 21A.24, or other applicable laws;

(King County 6-2008)

URBAN ENVIRONMENT

25.16.190 - 26.16.200

- b. the ditch was not constructed or created in violation of law;
 - c. the maintenance is accomplished with the least amount of disturbance to the stream or ditch as possible;

- d. the maintenance occurs during the summer low flow period and is timed to avoid disturbance to the stream or ditch during periods critical to salmonids; and

- e. the maintenance complies with standards designed to protect salmonids and salmonid habitat, consistent with K.C.C. chapter 21A.24; provided, that this paragraph shall not be construed to permit the mining or quarrying of any substance below the ordinary high water mark;

- I. Disposal of dredged material shall be done only in approved deep water disposal sites or approved contain upland disposal sites;

- J. Stockpiling of dredged material in or under water is prohibited;

- K. Maintenance dredging not requiring a shoreline permit(s) shall conform to the requirements of this section;

- L. Dredging shall be timed so that it does not interfere with aquatic life;

- M. The county may impose reasonable conditions on dredging or disposal operations including but not limited to working seasons and provisions of buffer strips, including retention or replacement of existing vegetation, dikes and settling basins to protect the public safety and shore users' lawful interests from unnecessary adverse impact;

- N. In order to insure that operations involving dredged material disposal and maintenance dredging are consistent with this program as required by RCW 90.58.140(1), no dredging may commence on shorelines without the responsible person having first obtained either a substantial development permit or a statement of exemption, though no statement of exemption or shoreline permit is required for emergency dredging needed to protect property from imminent damage by the elements;

- O. Operation and maintenance of any existing system of ditches, canals or drains, or construction of irrigation reservoirs, for agricultural purposes are exempt from the shoreline permit requirement. (Ord. 16172 § 7, 2008: Ord. 13247 § 3, 1998: Ord. 5734 § 6, 1981: Ord. 3688 § 414, 1978).

Seattle SMP Update Process 9-2009

PROPOSALS FOR SMP UPDATE

Proposed Goals & Policies

Below are the proposed comprehensive plan goals and policies relating to dredging and filling:

Dredging should only be permitted where necessary for access to water-dependent or water-related uses, environmental mitigation or enhancement, clean-up of contaminated materials, and installation of utilities and bridges. Projects should be designed to minimize impacts to ecological function and should incorporate mitigation for dredging impacts to ensure no net loss of ecological function. Dredging and disposal of dredge materials shall be conducted in a manner that minimizes short and long-term environmental damage. (LU249)

Landfill on submerged land that does not create dry land should only be permitted where necessary for the operation of a water-dependent or water-related use, transportation projects of state-wide significance, installation of a bridge or utility line, disposal of dredged material in accordance with the Dredged Material Management Program, beach nourishment or environmental mitigation or enhancement. Landfill that creates dry land should only be permitted where necessary for transportation projects of statewide significance, repair of pocket erosion, beach nourishment, or environmental mitigation or enhancement. Projects should be designed to minimize impacts to ecological function and should incorporate mitigation for dredging impacts to ensure no net loss of ecological function. Fills shall be constructed in a manner that minimizes short and long-term environmental damage. (LU250)

Kent August 2009 draft

7. Dredging shall be permitted only:

- a. For navigation or navigational access and recreational access;
 - b. In conjunction with a water-dependent use of water bodies or adjacent shorelands;
 - c. As part of an approved habitat improvement project;
 - d. To improve water quality;
 - e. In conjunction with a bridge, navigational structure or wastewater treatment facility for which there is a documented public need and where other feasible sites or routes do not exist;
 - f. To improve water flow or manage flooding only when consistent with an approved flood/storm water comprehensive management plan; or
 - g. To clean up contaminated sediments.
8. When dredging is permitted, the dredging shall be the minimum necessary to accommodate the proposed use.
9. New dredging activity is prohibited:
- a. In shoreline areas with bottom materials which are prone to significant sloughing and refilling due to currents, resulting in the need for continual maintenance dredging, except by Conditional Use permit; and

b. In habitats identified as critical to the life cycle of officially designated or protected fish, shellfish or wildlife.

10. Dredging for the primary purpose of obtaining material for landfill is prohibited.

11. New development shall be located and designed to avoid or minimize the need for new or maintenance dredging where feasible.

12. Maintenance dredging of established navigation channels, public access facilities and basins is restricted to maintaining previously dredged and/or existing authorized location, depth, and width.

Erika Conkling

From: Laurie Baker [laurieb@mvseac.com]
Sent: Friday, September 11, 2009 3:20 PM
To: Shoreline
Subject: Comment on the Draft Shoreline Master Program

Comment on the Draft Shoreline Master Program

My concern is the arbitrary way restrictions are being placed on water front property.

Neither science nor fairness supports placing different restrictions on property parcels based on the size of the property. To vary the portion of the property with use restrictions from as low as 25% or 25 feet to 47% or 70 feet, does not provide fair, impartial treatment of all property owners.

If 25 feet is a sufficient buffer for some properties, then 25 feet is sufficient for all properties.

Laurie Baker
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